

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF) CR-05-00215-EJD
AMERICA,)
PLAINTIFF,) DECEMBER 9, 2011
V.)
ERIC AARON LIGHTER,)
DEFENDANT.)
PARTIAL TRANSCRIPT
PAGES 1 - 100

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE EDWARD J. DAVILA

A P P E A R A N C E S:

FOR THE PLAINTIFF: U.S. DEPARTMENT OF JUSTICE
BY: CHARLES A. O'REILLY
KATHERINE WONG
P.O.BOX 972
WASHINGTON, D.C. 20044

FOR THE DEFENDANT: CAREY & CAREY
BY: JERRY Y. FONG
706 COWPER STREET
PALO ALTO, CALIFORNIA 94301

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

1 A P P E A R A N C E S: (CONT'D)

2 ALSO PRESENT:

3 INTERNAL REVENUE SERVICE
4 BY: CHARLES TONNA
5 450 GOLDEN GATE AVENUE
6 6TH FLOOR
7 SAN FRANCISCO, CALIFORNIA
8 94102

9 DEPARTMENT OF THE TREASURY
10 BY: WILLIAM LEE
11 KENNETH BONANO
12 450 GOLDEN GATE AVENUE
13 7TH FLOOR, SUITE 7-2506
14 SAN FRANCISCO, CALIFORNIA
15 94102

INDEX OF PROCEEDINGS

FOR THE GOVERNMENT:

SAMUEL S. FUNG

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1 SAN JOSE, CALIFORNIA

DECEMBER 9, 2011

2 PROCEEDINGS
3
45 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
13:46:05 6 HELD IN THE PRESENCE OF THE JURY:)13:46:05 7 THE COURT: ALL RIGHT. WE'RE BACK ON THE
13:46:07 8 RECORD IN THE LIGHTER MATTER. PLEASE SIT DOWN.
13:46:09 9 THANK YOU. I APOLOGIZE. WE'RE BACK ON THE RECORD
13:46:12 10 IN THE LIGHTER MATTER.13:46:13 11 OUR JURORS AND ALTERNATES ARE PRESENT.
13:46:15 12 ALL COUNSEL AND THE DEFENDANT ARE PRESENT.13:46:18 13 MR. FUNG, IF YOU WOULD RETURN TO THE
13:46:20 14 STAND. I'LL REMIND YOU, SIR, YOU'RE STILL UNDER
13:46:22 15 OATH.13:46:23 16 LADIES AND GENTLEMEN, THANK YOU FOR YOUR
13:46:24 17 PATIENCE. SORRY WE DIDN'T GET STARTED AS I SAID WE
13:46:27 18 WOULD DO AT 1:00 O'CLOCK.13:46:29 19 MAY I TELL YOU THAT FROM TIME TO TIME,
13:46:31 20 OCCASIONALLY, THERE ARE TIMES WHEN I NEED TO GET
13:46:33 21 ADDITIONAL INFORMATION FROM THE PARTIES THAT I NEED
13:46:39 22 TO DO THAT OUTSIDE OF YOUR PRESENCE, AND
13:46:40 23 UNFORTUNATELY THIS IS ONE OF THOSE TIMES.13:46:42 24 I'M SORRY IF I DIDN'T PREANNOUNCE THAT TO
13:46:44 25 YOU. I HOPE YOU WERE COMFORTABLE WHILE YOU WERE

13:46:47 1 WAITING. I NOTICED YOU WERE HERE PROMPTLY AND
13:46:50 2 EARLY AND ON TIME AND I KNOW THAT BECAUSE WHEN YOU
13:46:54 3 BUZZ TO GET IN, IT RINGS IN MY DEPARTMENT.

13:46:58 4 MY CLERKS WERE OUT TO LUNCH, AND AS I
13:47:01 5 OCCASIONALLY ALLOW THEM TO DO, AND IT CALLED UPON
13:47:06 6 ME THEN TO PUSH THE BUTTON.

13:47:07 7 SO THANK YOU FOR BEING HERE EARLY AND I
13:47:10 8 APPRECIATE IT. THANK YOU VERY MUCH.

13:47:11 9 MS. WONG, GOOD AFTERNOON. ARE YOU READY
13:47:13 10 TO PROCEED THEN?

13:47:15 11 MS. WONG: THANK YOU, YOUR HONOR.

13:47:15 12 **SAMUEL S. FUNG,**
13:47:15 13 BEING RECALLED AS A WITNESS ON BEHALF OF THE
13:47:15 14 GOVERNMENT, HAVING BEEN PREVIOUSLY SWORN, WAS FURTHER
13:47:17 15 EXAMINED AND TESTIFIED AS FOLLOWS:

13:47:17 16 **DIRECT EXAMINATION (RESUMED)**

13:47:18 17 BY MS. WONG:

13:47:19 18 Q GOOD AFTERNOON, MR. FUNG.

13:47:20 19 A GOOD AFTERNOON.

13:47:21 20 Q NOW, BEFORE WE CONTINUE AND TALK ABOUT THE
13:47:23 21 EVENTS ABOUT THE PHONE CALLS THAT WE LISTENED TO IN
13:47:25 22 COURT YESTERDAY, I JUST WANT TO STEP BACK FOR A
13:47:28 23 MOMENT TO THE \$10,000 THAT YOU RECEIVED FROM
13:47:32 24 DR. GOOTNICK IN THAT PAPER BAG.

13:47:33 25 A YES.

13:47:33 1 Q NOW, WHAT DID YOU DO WITH THAT \$10,000 IN THAT
13:47:41 2 BAG?

13:47:41 3 A I GAVE IT TO THE DEFENDANT WHEN HE CAME OVER.

13:47:50 4 Q NOW, DID YOU RECEIVE ANY MONEY FOR REFERRING
13:47:53 5 THE GOOTNICKS TO THE DEFENDANT?

13:47:54 6 A YES.

13:47:54 7 Q AND HOW MUCH DID YOU RECEIVE?

13:47:55 8 A I DON'T RECALL. IT MUST BE ABOUT A THOUSAND
13:48:12 9 DOLLARS OR SO.

13:48:13 10 Q AND WHEN WERE YOU PAID THAT MONEY?

13:48:14 11 A AT THE TIME I GAVE THE MONEY TO THE DEFENDANT.

13:48:16 12 Q WERE YOU PAID IN FRONT OF THE GOOTNICKS?

13:48:18 13 A I'M SORRY?

13:48:21 14 Q WERE YOU PAID THAT MONEY IN FRONT OF THE
13:48:23 15 GOOTNICKS?

13:48:24 16 A NO.

13:48:24 17 Q TO YOUR KNOWLEDGE DID THE GOOTNICKS KNOW AT
13:48:26 18 LEAST AT THAT TIME THAT YOU HAD RECEIVED ANY MONEY
13:48:28 19 FOR REFERRING THEM?

13:48:29 20 A NO.

13:48:29 21 Q NOW, MR. FUNG, I'M GOING TO HAVE PUBLISHED TO
13:48:36 22 YOU WHAT IS ALREADY IN EVIDENCE AS GOVERNMENT'S
13:48:38 23 EXHIBIT 23 AND WE'RE GOING TO GO TO PAGE 617.

13:48:46 24 NOW, DO YOU RECALL LISTENING TO THOSE
13:48:48 25 THREE RECORDED TELEPHONE CALLS YESTERDAY?

13:48:51 1 A YES.

13:48:51 2 Q AND THAT WAS YOU ON THOSE CALLS WITH

13:48:58 3 DR. GOOTNICK?

13:48:58 4 A YES.

13:48:58 5 Q AND, NOW, I'D LIKE YOU TO TAKE A LOOK AT THIS

13:49:01 6 RECORD. AND DO YOU RECOGNIZE -- IS THAT YOUR PHONE

13:49:03 7 NUMBER THAT IS SHOWN THERE AS AN OUTGOING CALL?

13:49:07 8 A YES.

13:49:07 9 Q AND DO YOU RECOGNIZE THE NUMBER THAT IS SHOWN

13:49:09 10 AT THE TOP OF THAT TELEPHONE RECORD?

13:49:19 11 A YES.

13:49:20 12 Q AND WHOSE NUMBER IS IT?

13:49:21 13 A THE DEFENDANT.

13:49:21 14 Q AND SO YOU RECEIVED ON MARCH 2ND, 2006 FOUR

13:49:29 15 OUTGOING CALLS FROM THE DEFENDANT; IS THAT RIGHT?

13:49:31 16 A THAT'S CORRECT.

13:49:31 17 Q LET'S GO TO THE NEXT PAGE OF GOVERNMENT'S

13:49:34 18 EXHIBIT 23. AND IF WE CAN FOCUS IN AT THE TOP. IS

13:49:45 19 THAT YOUR NUMBER AS SHOWING AS INCOMING CALLS TO

13:49:48 20 THE DEFENDANT'S NUMBER?

13:49:49 21 A YES, YES.

13:49:50 22 Q AND THAT WAS ALSO ON MARCH 2ND, 2006?

13:49:53 23 A YES.

13:50:00 24 Q LET'S GO TO THE MIDDLE OF THIS PAGE.

13:50:03 25 Q NOW, MR. FUNG, IS THAT NUMBER SHOWING AS YOURS

13:50:06 1 HAVING RECEIVING TWO INCOMING CALLS FROM THE
13:50:08 2 DEFENDANT AND ALSO ONE CALL FROM YOU TO THE
13:50:10 3 DEFENDANT?

13:50:10 4 A YES. YES.

13:50:12 5 Q LET'S GO TO PAGE 619. WE CAN GO TO THE MIDDLE
13:50:36 6 OF THE PAGE. NOW, MR. FUNG, IS THAT YOUR NUMBER AS
13:50:39 7 SHOWN AS RECEIVING ONE CALL FROM THE DEFENDANT ON
13:50:41 8 MARCH 8TH, 2006 AND ONE CALL FROM THE DEFENDANT ON
13:50:45 9 MARCH 9TH, 2006?

13:50:46 10 A YES, YES.

13:50:50 11 Q AND IF YOU LOOK AT THE LAST ENTRY ON THAT
13:50:52 12 PAGE, IS THAT YOUR NUMBER AS SHOWING AS RECEIVING
13:50:54 13 ONE CALL FROM THE DEFENDANT ON MARCH 10TH, 2006?

13:50:57 14 A YES.

13:50:57 15 Q FINALLY LET'S GO TO THE NEXT PAGE, 620.

13:51:08 16 NOW, MR. FUNG, AT THE TOP OF THE PAGE, IS
13:51:11 17 THAT YOUR NUMBER THAT IS SHOWING AS HAVING AN
13:51:16 18 INCOMING CALL TO THE DEFENDANT ON MARCH 10TH, 2006?

13:51:19 19 A YES.

13:51:19 20 Q AND IN THE MIDDLE OF THE PAGE IS THAT YOUR
13:51:21 21 NUMBER THAT IS SHOWN AS CALLING THE DEFENDANT ON
13:51:25 22 MARCH 12TH, OF 2006?

13:51:28 23 A YES.

13:51:28 24 Q AND DOWN LOWER ON MARCH 13TH, ARE THOSE SEVEN
13:51:33 25 CALLS THAT YOU RECEIVED FROM THE DEFENDANT 'S

13:51:35 1 NUMBER?

13:51:36 2 A YES.

13:51:37 3 Q AND WERE YOU THE PERSON SPEAKING TO THE

13:51:39 4 DEFENDANT IN ALL OF THESE CALLS THAT WE JUST TALKED

13:51:42 5 ABOUT?

13:51:42 6 A YES.

13:51:42 7 Q I'D LIKE TO TALK TO YOU NOW, MR. FUNG, ABOUT

13:51:47 8 WHAT HAPPENED ON MARCH 10TH OF 2006.

13:51:50 9 ON THAT DAY DID YOU SPEAK WITH

13:51:52 10 DR. GOOTNICK, NOT LOOKING AT THESE RECORDS, BUT

13:52:00 11 FROM YOUR RECOLLECTION?

13:52:01 12 A I DON'T REMEMBER.

13:52:06 13 Q DID YOU SPEAK WITH DR. GOOTNICK AGAIN AFTER

13:52:08 14 THE THREE CALLS THAT WE LISTENED TO ON MARCH 3RD OF

13:52:11 15 2006?

13:52:12 16 A I DON'T RECALL.

13:52:20 17 Q WERE YOU AWARE AT ANY TIME THAT YOU MIGHT HAVE

13:52:22 18 BEEN RECORDED IN ANY SUBSEQUENT PHONE CALLS WITH

13:52:25 19 DR. GOOTNICK?

13:52:26 20 A CAN YOU REPEAT THE QUESTION.

13:52:33 21 Q LET'S -- MR. FUNG, WHAT WE'LL DO NOW IS WE'LL

13:52:37 22 PLAY GOVERNMENT'S EXHIBIT 14 WHICH IS ALREADY IN

13:52:39 23 EVIDENCE.

13:52:39 24 THE COURT: ALL RIGHT. THIS WILL FOLLOW

13:52:41 25 THE SAME FORMAT AS YESTERDAY'S?

13:52:45 1 MS. WONG: YES, YOUR HONOR.

13:52:45 2 THE COURT: SO PLEASE RECALL, LADIES AND

13:52:47 3 GENTLEMEN OF THE JURY, I ADMONISHED YOU YESTERDAY

13:52:49 4 REGARDING THE TAPE AND TRANSCRIPT. THAT SAME

13:52:51 5 ADMONISHMENT APPLIES TO THIS.

13:52:53 6 WE'LL SEE THE SUPER TITLES AND HEAR THE

13:52:56 7 LANGUAGE. THE TRANSCRIPT IS MERELY TO ASSIST YOU.

13:53:00 8 THE EVIDENCE IS ACTUALLY THE RECORDINGS AND YOU'LL

13:53:03 9 PAY ATTENTION TO THE RECORDINGS.

13:53:07 10 IF YOU CAN PLAY THAT NOW THEN.

13:53:09 11 MS. WONG: YES, YOUR HONOR. THANK YOU.

13:53:10 12 EXHIBIT 14.

13:53:26 13 (WHEREUPON, A DIGITAL RECORDING WAS

13:53:28 14 PLAYED IN OPEN COURT OFF THE RECORD.)

13:53:28 15 MS. WONG: COULD WE ACTUALLY BACK UP THE

13:53:30 16 EXHIBIT SO THE JURY CAN HEAR THE DATE AT THE

13:53:33 17 BEGINNING? IT WAS JUST A LITTLE SOFT.

13:53:59 18 IF YOU CAN STOP THE RECORDING FOR A

13:54:01 19 MOMENT.

13:54:03 20 Q MR. FUNG, DOES THIS, IN FACT, REFRESH YOUR

13:54:06 21 RECOLLECTION THAT YOU SPOKE TO DR. GOOTNICK ON

13:54:08 22 MARCH 6TH?

13:54:09 23 A YES.

13:54:09 24 Q AND DID YOU TALK TO HIM THAT DAY?

13:54:11 25 A YES.

13:54:11 1 Q AND WHEN YOU SPOKE TO HIM AT THAT TIME, DID
13:54:13 2 YOU KNOW THAT THE CONVERSATION WAS BEING RECORDED?
13:54:15 3 A NO.
13:54:18 4 MS. WONG: YOU CAN CONTINUE WITH THE
13:54:19 5 RECORDING.
13:54:20 6 (WHEREUPON, A DIGITAL RECORDING WAS
13:54:20 7 PLAYED IN OPEN COURT OFF THE RECORD.)
14:01:58 8 BY MS. WONG:
14:01:58 9 Q MR. FUNG, A FEW QUICK QUESTIONS ABOUT THE
14:02:09 10 TAPE. YOU HEARD YOU MENTIONED ON THE TAPE TAX
14:02:11 11 RETURNS, DIDN'T YOU?
14:02:14 12 A YES.
14:02:15 13 Q AND WHAT WAS YOUR CONCERN WITH DR. GOOTNICK'S
14:02:19 14 TAX RETURNS?
14:02:35 15 A I DON'T RECALL, BUT OBVIOUSLY THIS IS NATIONAL
14:02:39 16 TRUST SERVICES TRUST PRINCIPLES AND THAT WOULD BE
14:02:52 17 SOME OF THE, YOU KNOW, THE INFORMATION THAT IS
14:02:57 18 CONSIDERED IN THE TRUST.
14:03:02 19 Q AND WAS THAT THE BASIS OF THE CRIMINAL CHARGES
14:03:05 20 THAT HAD BEEN BROUGHT AGAINST YOU, THE NATIONAL
14:03:08 21 TRUST SERVICES AND YOU USING THOSE PRINCIPLES TO
14:03:10 22 PREPARE RETURNS?
14:03:10 23 A YES.
14:03:11 24 Q AND THOSE -- WERE THOSE THE SAME PRINCIPLES
14:03:13 25 THAT YOU USED ON DR. GOOTNICK'S RETURNS?

14:03:15 1 A YES.

14:03:16 2 Q AND WHEN YOU SAY THAT -- WHEN YOU WERE TELLING

14:03:20 3 DR. GOOTNICK THAT HE COULD EITHER BE YOUR FRIEND OR

14:03:22 4 YOUR ENEMY, WHAT WERE YOU TRYING, IF ANYTHING, TO

14:03:26 5 GET DR. GOOTNICK TO DO?

14:03:27 6 A THAT HAVING KNOWLEDGE AS BEING THE TRUSTEE OF

14:03:49 7 HIS TRUST, I SHOULD HAVE KNOWLEDGE ON THE, THE

14:03:56 8 INFORMATION, THE INPUT ON THE RETURNS.

14:03:59 9 Q AND SO WITH RESPECT TO WHEN YOU WERE TELLING

14:04:02 10 DR. GOOTNICK THAT HE COULD EITHER BE YOUR FRIEND OR

14:04:04 11 ENEMY WITH -- YOU KNOW, BECAUSE OF YOUR ROLE IN

14:04:08 12 BEING HIS TRUSTEE, WHAT, IF ANYTHING, WERE YOU

14:04:11 13 TRYING TO GET HIM TO DO WITH RESPECT TO THE

14:04:13 14 DEFENDANT'S CIVIL LAWSUIT INVOLVING THE GOOTNICKS?

14:04:15 15 A I REMEMBER THAT THE DEFENDANT WOULD CALL ME ON

14:04:22 16 THE PHONE AND GIVE ME THAT EXPLANATION THAT AT THE

14:04:32 17 TIME, YOU KNOW, THE DEFENDANT CONVINCED ME, YOU

14:04:38 18 KNOW, THAT INFORMATION AND FOR ME TO SAY WHAT I

14:04:45 19 SAID TO HIM AT THAT TIME.

14:04:47 20 Q AND SO ACCORDING TO YOU, HOW COULD

14:04:49 21 DR. GOOTNICK BE YOUR FRIEND AND THE DEFENDANT'S

14:04:51 22 FRIEND?

14:04:52 23 A HE CAN'T, I GUESS.

14:05:06 24 Q BUT WHAT WOULD DR. GOOTNICK HAVE TO DO TO BE

14:05:13 25 YOURS AND THE DEFENDANT'S FRIEND?

14:05:14 1 A DROP THE LAWSUIT.

14:05:15 2 Q AND WHEN YOU -- AND WHEN IT WAS JUST SAID ON

14:05:18 3 THIS PARTICULAR SECTION OF TAPE THAT ALLEGED

14:05:20 4 SCENARIO INVOLVING THE \$10,000 AT MAX'S, DID THAT

14:05:25 5 ACTUALLY HAPPEN?

14:05:26 6 A YES.

14:05:26 7 Q AND SO WHEN YOU SAID IT WAS AN ALLEGED

14:05:29 8 SCENARIO, WAS THAT TRUE OR FALSE TO DR. GOOTNICK ON

14:05:34 9 THE TAPE JUST NOW?

14:05:35 10 A I DID RECEIVE THE MONEY FROM DR. GOOTNICK.

14:05:44 11 Q SO WAS THE STATEMENT TO DR. GOOTNICK ON THE

14:05:47 12 TAPE THAT IT WAS AN ALLEGED STATEMENT WAS FALSE?

14:05:51 13 A YES.

14:05:51 14 Q LET'S CONTINUE WITH THE TAPE.

14:05:55 15 (WHEREUPON, A DIGITAL RECORDING WAS

14:15:48 16 PLAYED IN OPEN COURT OFF THE RECORD.)

14:15:48 17 BY MS. WONG:

14:15:48 18 Q NOW, MR. FUNG, DO YOU KNOW WHO EMPLOYED THIS

14:15:51 19 ATTORNEY OR THIS C.P.A. DR. WING THAT YOU WERE

14:15:55 20 TALKING TO DR. GOOTNICK ABOUT JUST NOW IN THE

14:15:58 21 RECORDING?

14:15:59 22 A NO.

14:15:59 23 Q AND YOU DON'T KNOW WHO HAD HIRED HIM OR WHO HE

14:16:02 24 WAS WORKING WITH?

14:16:03 25 A I BELIEVE IT'S THE DEFENDANT.

14:16:10 1 Q AND EARLIER DR. GOOTNICK HAD ASKED YOU WHY YOU
14:16:15 2 HAD LIED TO HIM ABOUT THE TRANSACTION.
14:16:18 3 WHAT IS DR. GOOTNICK REFERRING TO WITH
14:16:21 4 REGARDS TO THAT LIE?
14:16:24 5 MR. FONG: OBJECTION, SPECULATION.
14:16:26 6 BY MS. WONG:
14:16:27 7 Q IF YOU KNOW?
14:16:28 8 THE COURT: SUSTAINED. YOU CAN ASK THE
14:16:30 9 QUESTION AGAIN.
14:16:31 10 BY MS. WONG:
14:16:32 11 Q IF YOU KNOW, WHAT IS DR. GOOTNICK REFERRING TO
14:16:34 12 WHEN HE SAYS YOU HAD LIED TO HIM?
14:16:37 13 A DR. GOOTNICK REFERRED THAT I SAID THAT I DID
14:16:47 14 NOT RECEIVE THE \$10,000.
14:16:51 15 Q AND HAD YOU SAID THAT? HAD YOU LIED TO
14:16:55 16 DR. GOOTNICK?
14:17:03 17 A I BELIEVE IT'S ON THE DEPOSITION THAT I SAID
14:17:08 18 BECAUSE MY UNDERSTANDING IS THAT THE DEFENDANT
14:17:10 19 RECEIVED THE MONEY AND I DID NOT RECEIVE THE MONEY
14:17:15 20 LIKE PUT IT IN MY BANK ACCOUNT.
14:17:17 21 Q AND SO WHEN YOU SAY THAT -- SO WHEN THE -- IN
14:17:21 22 THE DEPOSITION HAD YOU SAID THAT YOU HAD NOT
14:17:23 23 RECEIVED THE MONEY, JUST TO BE CLEAR?
14:17:25 24 A YOU SEE, AT THE TIME I, YOU KNOW, CONSIDERED
14:17:28 25 MYSELF THE MESSENGER AND PICKED UP THE MONEY AND

14:17:32 1 GIVE IT TO YOU THE DEFENDANT.

14:17:34 2 Q AND WHO HAD YOU SPOKEN TO, IF ANYONE, BEFORE
14:17:36 3 YOU HAD THAT DEPOSITION IN THE GOOTNICK'S LAWSUIT?

14:17:39 4 A THE DEFENDANT.

14:17:40 5 Q LET'S CONTINUE WITH THE RECORDING.

14:29:42 6 (WHEREUPON, A DIGITAL RECORDING WAS
14:29:43 7 PLAYED IN OPEN COURT OFF THE RECORD.)

14:29:43 8 BY MS. WONG:

14:29:44 9 Q NOW, MR. FUNG, DURING THAT MARCH 10TH
14:29:47 10 CONVERSATION, YOU KEPT MENTIONING THE I.R.S. AND
14:29:49 11 THE CALIFORNIA FRANCHISE TAX BOARD, DIDN'T YOU?

14:29:53 12 A YES.

14:29:54 13 Q AND WHAT WERE YOU TRYING, IF ANYTHING, TO GET
14:29:58 14 DR. GOOTNICK TO DO WHEN YOU KEPT MENTIONING THE
14:30:01 15 I.R.S. AND THE FRANCHISE TAX BOARD?

14:30:04 16 A ABOUT THE TAX LIABILITIES.

14:30:06 17 Q AND HOW WERE YOU TRYING TO MAKE DR. GOOTNICK
14:30:09 18 FEEL?

14:30:09 19 A FEAR.

14:30:17 20 Q AND WHAT, IF ANYTHING, WERE YOU TRYING TO
14:30:19 21 CONVINCE DR. GOOTNICK TO DO DURING THAT MARCH 10TH
14:30:22 22 TELEPHONE CONVERSATION?

14:30:23 23 A TO DROP THE CIVIL LAWSUIT BETWEEN GOOTNICK AND
14:30:25 24 THE DEFENDANT.

14:30:26 25 Q NOW, MR. FUNG, YOU'LL RECALL THAT WE LISTENED

14:30:36 1 TO SOME CONVERSATIONS BETWEEN YOU AND DR. GOOTNICK
14:30:42 2 YESTERDAY IN COURT?

14:30:43 3 A YES.

14:30:43 4 Q AND DURING THOSE CONVERSATIONS, DO YOU RECALL
14:30:45 5 THE PART WHERE YOU AND DR. GOOTNICK WERE TALKING
14:30:47 6 ABOUT HIS MONEY AND HIS PROPERTY, AND YOU WERE
14:30:49 7 TELLING HIM, WITH OTHER WORDS, TO FORGET ABOUT HIS
14:30:53 8 MONEY AND PROPERTY.

14:30:54 9 DO YOU RECALL THAT PART OF THE
14:30:56 10 CONVERSATION?

14:30:56 11 A YES.

14:30:56 12 Q NOW, THAT MONEY AND THAT PROPERTY, HAD YOU
14:30:58 13 SPOKEN WITH THE DEFENDANT ABOUT DR. GOOTNICK'S
14:31:02 14 MONEY AND PROPERTY AFTER YOU WERE CRIMINALLY
14:31:03 15 INDICTED?

14:31:04 16 A NO.

14:31:15 17 Q SO YOU NEVER HAD SPOKEN ABOUT WHETHER THE
14:31:17 18 DEFENDANT HAD ANY OF THE GOOTNICKS' MONEY AND
14:31:21 19 PROPERTY AFTER YOU WERE CRIMINALLY CHARGED?

14:31:26 20 MR. FONG: OBJECTION, ASKED AND ANSWERED.

14:31:27 21 THE COURT: OVERRULED. YOU CAN ANSWER
14:31:29 22 THE QUESTION.

14:31:30 23 THE WITNESS: COULD YOU REPEAT THE
14:31:32 24 QUESTION.

14:31:32 25 BY MS. WONG:

14:31:33 1 Q SO ARE YOU SAYING YOU NEVER SPOKE WITH THE
14:31:35 2 DEFENDANT ABOUT THE GOOTNICKS' MONEY AND PROPERTY
14:31:37 3 AFTER YOU WERE CRIMINALLY CHARGED?
14:31:39 4 A I DID.
14:31:44 5 Q AND WHEN YOU SPOKE WITH THE DEFENDANT, WHAT,
14:31:46 6 IF ANYTHING, DID THE DEFENDANT ASK YOU ABOUT THE
14:31:48 7 GOOTNICKS' MONEY AND PROPERTY?
14:31:50 8 A I ASKED THE DEFENDANT IF HE DID RECEIVE
14:31:58 9 GOOTNICKS' HALF A MILLION DOLLARS.
14:31:59 10 Q AND WHAT, IF ANYTHING, DID THE DEFENDANT SAY
14:32:01 11 WHEN YOU ASKED HIM THAT?
14:32:07 12 A HE SAID HE DID.
14:32:08 13 Q AND WHAT, IF ANYTHING, DID YOU SAY TO THE
14:32:10 14 DEFENDANT WHEN HE TOLD YOU HE HAD RECEIVED THAT
14:32:13 15 HALF A MILLION DOLLARS?
14:32:15 16 A I TOLD HIM TO GIVE THE MONEY BACK TO GOOTNICK.
14:32:18 17 Q AND WHAT DID THE DEFENDANT SAY WHEN YOU TOLD
14:32:20 18 THE DEFENDANT TO GIVE IT BACK TO GOOTNICK?
14:32:23 19 A HE SAID SOMETHING IN THE CONTEXT OF HE DOESN'T
14:32:29 20 HAVE THE MONEY ANYMORE.
14:32:30 21 Q AND SO DID THE DEFENDANT SAY WHETHER HE WOULD
14:32:35 22 GIVE IT BACK OR NOT?
14:32:36 23 A NO.
14:32:36 24 Q NO? NO WHAT?
14:32:44 25 A NOT GIVING THE MONEY BACK TO GOOTNICK.

14:32:46 1 MS. WONG: NO FURTHER QUESTIONS FOR THIS
14:32:47 2 WITNESS.

14:32:48 3 THE COURT: MR. FONG, DO YOU HAVE
14:32:50 4 CROSS-EXAMINATION?

14:32:51 5 MR. FONG: YES, I DO, YOUR HONOR. THANK
14:32:53 6 YOU.

14:34:02 7 THE COURT: FOLKS, IF YOU WANT TO STAND
14:34:04 8 AND STRETCH, GO RIGHT AHEAD.

14:34:49 9 **CROSS-EXAMINATION**

14:34:49 10 BY MR. FONG:

14:34:49 11 Q GOOD AFTERNOON, MR. FUNG.

14:34:51 12 A GOOD AFTERNOON.

14:34:52 13 Q AS YOU KNOW MY NAME IS JERRY FONG AND I
14:34:57 14 REPRESENT MR. LIGHTER. WE HAVE MET BEFORE; IS THAT
14:35:00 15 CORRECT?

14:35:00 16 A NO -- I MEAN, I HAVE SEEN YOU AROUND. YEAH.

14:35:03 17 Q CLOSE ENOUGH.

14:35:04 18 NOW, LET ME START WITH -- NOW, YOU HAD
14:35:14 19 PLED GUILTY TO COUNT 1 IN THIS CASE; IS THAT
14:35:18 20 CORRECT?

14:35:18 21 A CORRECT.

14:35:20 22 Q BECAUSE ORIGINALLY YOU WERE INDICTED BACK IN
14:35:25 23 APRIL OF 2005 IN THE ORIGINAL INDICTMENT IN THIS
14:35:29 24 CASE; IS THAT CORRECT?

14:35:30 25 A THAT'S CORRECT.

14:35:31 1 Q AND AT THE TIME OF THE ORIGINAL INDICTMENT
14:35:38 2 BACK IN APRIL OF 2005, YOU WERE THE ONLY PERSON
14:35:41 3 NAMED AS A DEFENDANT; IS THAT CORRECT?
14:35:43 4 A CORRECT.
14:35:44 5 Q OKAY. AND LATER ON MR. LIGHTER WAS ADDED AS
14:35:49 6 AN ADDITIONAL DEFENDANT; IS THAT CORRECT?
14:35:52 7 A CORRECT.
14:35:53 8 Q OKAY. NOW, YOU PLED GUILTY TO COUNT 1 IN I
14:36:00 9 BELIEVE IT'S THE THIRD SUPERSEDING INDICTMENT; IS
14:36:03 10 THAT CORRECT?
14:36:03 11 A I DON'T EXACTLY UNDERSTAND THE QUESTION. CAN
14:36:10 12 YOU REPEAT IT ONE MORE TIME.
14:36:12 13 Q OF COURSE. AFTER THE ORIGINAL INDICTMENT WAS
14:36:18 14 FILED IN APRIL OF 2005, THE GOVERNMENT FILED
14:36:21 15 SEVERAL OTHER INDICTMENTS; IS THAT CORRECT?
14:36:24 16 A CORRECT.
14:36:24 17 Q AND THE ONE THAT -- THE MOST RECENT ONE WAS A
14:36:29 18 THIRD SUPERSEDING INDICTMENT; IS THAT CORRECT?
14:36:32 19 A CORRECT.
14:36:32 20 Q AND WHAT YOU PLED GUILTY TO -- AND BY THE WAY,
14:36:37 21 EXCUSE ME. LET ME START OVER.
14:36:39 22 AND YOU PLED GUILTY SOME TIME IN
14:36:41 23 SEPTEMBER OF THIS YEAR; IS THAT CORRECT?
14:36:42 24 A CORRECT.
14:36:43 25 Q AND WHAT YOU PLED GUILTY TO WAS COUNT ONE IN

14:36:47 1 THE THIRD SUPERSEDING INDICTMENT; IS THAT CORRECT?

14:36:50 2 A CORRECT.

14:36:53 3 Q SO THE MOST RECENT INDICTMENT? IS THAT

14:37:02 4 CORRECT?

14:37:02 5 A I DON'T UNDERSTAND WHAT YOU MEAN BY "MOST

14:37:05 6 RECENT."

14:37:06 7 Q THAT'S ALL RIGHT. THAT'S FINE.

14:37:10 8 NOW, AS PART OF YOUR GUILTY PLEA WITH THE

14:37:12 9 GOVERNMENT, YOU ALSO ENTERED INTO WHAT IS KNOWN AS

14:37:14 10 A COOPERATION AGREEMENT WITH THE GOVERNMENT; IS

14:37:17 11 THAT CORRECT?

14:37:17 12 A YES, I GUESS. YES.

14:37:25 13 Q AND THAT IS TO SAY YOU, WITH YOUR ATTORNEY,

14:37:30 14 YOU AND THE U.S. GOVERNMENT CAME TO AN AGREEMENT IN

14:37:34 15 WRITING IN WHICH YOU WOULD SAY, IN WHICH IT SAID

14:37:39 16 THAT YOU WOULD COOPERATE WITH THE GOVERNMENT IN

14:37:42 17 PROSECUTING MR. LIGHTER; IS THAT CORRECT?

14:37:46 18 MS. WONG: OBJECTION. HE MISSTATES THE

14:37:49 19 NATURE OF MR. FUNG'S ACTION PROSECUTED MR. LIGHTER.

14:37:56 20 THE COURT: COULD YOU REPHRASE IT.

14:37:59 21 MR. FONG: OF COURSE, YOUR HONOR.

14:37:59 22 THE COURT: THANK YOU. I'LL SUSTAIN THE

14:38:02 23 OBJECTION.

14:38:04 24 BY MR. FONG:

14:38:05 25 Q NOW, MR. FUNG, YOU, THROUGH YOUR ATTORNEY AND

14:38:07 1 WITH YOUR ATTORNEY, ENTERED INTO AN AGREEMENT WITH
14:38:11 2 THE UNITED STATES GOVERNMENT INSOFAR AS THE
14:38:13 3 GOVERNMENT'S PROSECUTION OF MR. LIGHTER'S
14:38:16 4 PROSECUTION IN THIS CASE; IS THAT CORRECT?
14:38:19 5 A I AGREED TO COOPERATE WITH THE GOVERNMENT, BUT
14:38:29 6 THAT'S WHAT MY UNDERSTANDING IS.
14:38:30 7 Q AND COOPERATE WITH THE GOVERNMENT TO INCLUDE
14:38:34 8 THE GOVERNMENT'S PROSECUTION OF MR. LIGHTER; IS
14:38:37 9 THAT CORRECT?
14:38:37 10 A YES.
14:38:44 11 Q THANK YOU. NOW, AS PART OF THE COOPERATION --
14:38:48 12 FIRST OF ALL, THIS COOPERATION AGREEMENT WAS IN
14:38:53 13 WRITING; IS THAT CORRECT?
14:38:53 14 A YOU KNOW, I'M NOT AN ATTORNEY AND I'LL HAVE TO
14:39:03 15 GO BACK AND REVIEW THE DOCUMENTS TO ANSWER THE
14:39:05 16 QUESTION.
14:39:05 17 Q SURE.
14:39:06 18 A I JUST DON'T WANT TO SAY THE WRONG THING.
14:39:08 19 Q AND I APPRECIATE THAT SO OBVIOUSLY WE'RE ONLY
14:39:12 20 ENTITLED TO YOUR BEST RECOLLECTION.
14:39:14 21 LET ME ASK YOU, AT THE TIME THAT YOU
14:39:18 22 ENTERED INTO THE GUILTY PLEA, DO YOU REMEMBER IF
14:39:21 23 YOU SIGNED A WRITTEN AGREEMENT?
14:39:23 24 A YES.
14:39:24 25 Q OKAY. AND THAT WRITTEN AGREEMENT WAS CALLED A

14:39:28 1 PLEA AGREEMENT; IS THAT CORRECT?

14:39:29 2 A THAT'S CORRECT.

14:39:30 3 Q AND INSIDE OF THAT PLEA AGREEMENT THERE WERE A

14:39:35 4 COUPLE PARAGRAPHS TALKING ABOUT YOUR COOPERATING

14:39:39 5 WITH THE GOVERNMENT; IS THAT CORRECT?

14:39:40 6 A THAT'S CORRECT.

14:39:40 7 Q OKAY. SO YOUR AGREEMENT TO COOPERATE WITH THE

14:39:44 8 GOVERNMENT IN THIS CASE IS IN WRITING?

14:39:47 9 A THAT'S CORRECT.

14:39:49 10 Q NOW, ONE OF THOSE, ONE OF THE THINGS THAT YOU

14:39:54 11 AGREED TO DO IN YOUR COOPERATION WITH THE

14:39:56 12 GOVERNMENT IS TO TESTIFY AT THE TRIAL AGAINST

14:40:02 13 MR. LIGHTER; IS THAT CORRECT?

14:40:04 14 A THAT'S CORRECT.

14:40:05 15 Q BUT THERE WERE OTHER THINGS THAT YOU WERE

14:40:07 16 SUPPOSED TO DO, TOO, RIGHT, UNDER THE COOPERATING

14:40:16 17 AGREEMENT?

14:40:17 18 A YES.

14:40:18 19 Q LIKE, FOR EXAMPLE, YOU WERE SUPPOSED TO, AT

14:40:24 20 THE GOVERNMENT'S REQUEST, YOU WERE SUPPOSED TO SIT

14:40:26 21 DOWN WITH THE GOVERNMENT, INCLUDING THE PROSECUTORS

14:40:28 22 IN THIS CASE, MR. O'REILLY AND MS. WONG, AND THE

14:40:31 23 CASE AGENTS, AND ANSWER AND BE INTERVIEWED, IN

14:40:33 24 ESSENCE; RIGHT?

14:40:35 25 A YES.

14:40:35 1 Q AND YOU WERE SUPPOSED TO ANSWER -- YOUR
 14:40:39 2 UNDERSTANDING IS THAT THE PLEA AGREEMENT REQUIRED
 14:40:41 3 YOU TO ANSWER EVERY QUESTION THAT THEY ASK YOU
 14:40:45 4 COMPLETELY AND TRUTHFULLY; IS THAT CORRECT?
 14:40:47 5 A THAT'S CORRECT.
 14:40:48 6 Q OKAY. AND THAT IT WAS NOT -- AND YOUR
 14:40:53 7 UNDERSTANDING WAS THAT UNDER THE PLEA AGREEMENT, IT
 14:40:55 8 WAS NOT UP TO YOU TO DECIDE WHAT TO TELL THEM AND
 14:40:59 9 WHAT NOT TO TELL THEM; IS THAT CORRECT?
 14:41:00 10 A THAT'S CORRECT.
 14:41:02 11 Q BECAUSE IF THEY ASKED YOU SOMETHING, YOU WERE
 14:41:05 12 SUPPOSED TO TELL THEM EVERYTHING, GOOD, BAD, OR
 14:41:08 13 ANYTHING IN BETWEEN; IS THAT CORRECT?
 14:41:10 14 A I ANSWERED THE QUESTION TRUTHFULLY.
 14:41:17 15 Q AND COMPLETELY? THAT IS TO SAY, YOU KNEW THAT
 14:41:20 16 UNDER THE PLEA AGREEMENT YOU'RE NOT SUPPOSED TO
 14:41:23 17 LEAVE OUT ANYTHING; IS THAT CORRECT?
 14:41:28 18 A I'M NOT SUPPOSED TO TELL THE STORY --
 14:41:35 19 Q I'M SORRY, WHAT?
 14:41:37 20 A I MEAN, I NEED TO ANSWER THE QUESTION. YOU
 14:41:41 21 SAY THAT I DO. YOU'RE SAYING MORE BEYOND THE
 14:41:45 22 QUESTION.
 14:41:45 23 Q WELL, I APOLOGIZE IF MY QUESTION WAS A BAD
 14:41:49 24 QUESTION. FEEL FREE TO LET THE COURT AND THE
 14:41:52 25 PROSECUTION KNOW IF YOU DON'T UNDERSTAND MY

14:41:54 1 QUESTION. AND I'LL DO MY BEST TO ASK THE QUESTION.

14:42:03 2 AND I APPRECIATE YOU LETTING ME KNOW.

14:42:04 3 SO LET ME WITHDRAW THAT LAST QUESTION AND

14:42:07 4 START WITH A NEW ONE.

14:42:08 5 BUT YOU UNDERSTAND THAT YOUR

14:42:10 6 RESPONSIBILITY UNDER THIS PLEA AGREEMENT, IN WHICH

14:42:12 7 YOU WERE SUPPOSED TO COOPERATE, YOU KNEW THAT PART

14:42:14 8 OF YOUR COOPERATION IS TO ANSWER THE QUESTIONS

14:42:18 9 TRUTHFULLY, YOU SAID THAT, BUT ALSO COMPLETELY,

14:42:20 10 THAT IS TO SAY NOT TO LEAVE ANYTHING OUT; RIGHT?

14:42:23 11 A I ANSWERED THE QUESTION TRUTHFULLY.

14:42:40 12 Q I GUESS WHAT I'M ASKING YOU IS --

14:42:44 13 A I DON'T KNOW WHAT IS THE DEGREE OF

14:42:46 14 COMPLETENESS.

14:42:46 15 Q OKAY. BUT YOU UNDERSTOOD, WHEN THE

14:42:49 16 GOVERNMENT -- AND I'M NOT TALKING ABOUT YOUR

14:42:50 17 TESTIMONY YESTERDAY OR TODAY.

14:42:52 18 WHAT I'M TALKING ABOUT IS WHEN YOU SAT

14:42:54 19 DOWN AND YOU WERE BEING INTERVIEWED BY MR. O'REILLY

14:42:58 20 AND MS. WONG AND THE CASE AGENTS, THAT YOU WERE

14:43:01 21 SUPPOSED TO TELL THEM EVERYTHING THAT YOU KNOW

14:43:03 22 ABOUT SUBJECTS THAT THEY WANT TO ASK YOU ABOUT; IS

14:43:07 23 THAT CORRECT?

14:43:07 24 A YES.

14:43:13 25 Q OKAY. SO THAT IS TO SAY, YOU'RE NOT SUPPOSED

14:43:18 1 TO HOLD ANYTHING BACK?

14:43:19 2 A NO.

14:43:20 3 Q THANK YOU. NOW, AND YOU DID SIT DOWN -- AFTER

14:43:23 4 YOU DECIDED TO PLEAD GUILTY, YOU DID SIT DOWN WITH

14:43:27 5 MR. O'REILLY OR NOT NECESSARILY JUST MR. O'REILLY,

14:43:30 6 BUT YOU DID SIT DOWN WITH THE PROSECUTORS AND THE

14:43:33 7 CASE AGENTS IN THIS CASE ON A COUPLE OF OCCASIONS;

14:43:37 8 IS THAT CORRECT?

14:43:37 9 A YES.

14:43:38 10 Q OKAY. AND, IN FACT, BY MY COUNT THERE WERE AT

14:43:44 11 LEAST FOUR DIFFERENT INTERVIEWS THAT IN WHICH YOU

14:43:49 12 SAT DOWN WITH THE PROSECUTORS AND THE CASE AGENTS

14:43:52 13 AND YOUR ATTORNEY IN WHICH YOU WERE INTERVIEWED

14:43:55 14 ABOUT THE FACTS OF THIS CASE; IS THAT CORRECT?

14:43:57 15 A YES.

14:43:59 16 Q OKAY. AND THE FIRST ONE, I BELIEVE, WAS

14:44:03 17 AROUND OR ON SEPTEMBER 13TH, 2011 OF THIS YEAR; IS

14:44:10 18 THAT CORRECT?

14:44:10 19 A I DON'T RECALL THE EXACT DATE.

14:44:13 20 Q BUT IT WAS AROUND MID-SEPTEMBER?

14:44:15 21 A YEAH.

14:44:16 22 Q OKAY. THAT WAS THE FIRST TIME, RIGHT?

14:44:18 23 A YES.

14:44:18 24 Q AND THAT WENT, THAT WENT ON FOR A LITTLE

14:44:25 25 WHILE; IS THAT CORRECT?

14:44:25 1 A YES.

14:44:26 2 Q AND, IN FACT, I THINK AT ONE POINT YOU AND THE

14:44:30 3 GOVERNMENT PEOPLE WHO WERE INTERVIEWING YOU HAD TO

14:44:33 4 BREAK FOR LUNCH; IS THAT CORRECT?

14:44:34 5 A I'M TRYING TO REMEMBER.

14:44:44 6 Q AND PLEASE TAKE YOUR TIME, SIR. I'M NOT

14:44:46 7 TRYING TO HURRY YOU.

14:44:56 8 A I RECALL DINNER, BUT I'M NOT SURE ABOUT LUNCH.

14:44:59 9 Q OKAY. BUT THE INTERVIEW WENT LONG ENOUGH IN

14:45:02 10 THAT FIRST MEETING THAT YOU AND THE PEOPLE WHO WERE

14:45:09 11 INTERVIEWING YOU TOOK A MEAL BREAK, REGARDLESS OF

14:45:13 12 WHETHER IT WAS LUNCH OR DINNER; CORRECT?

14:45:15 13 A CORRECT.

14:45:15 14 Q AND THEN ABOUT TWO WEEKS LATER THERE WAS THE

14:45:18 15 SECOND INTERVIEW; IS THAT CORRECT?

14:45:19 16 A I DON'T RECALL EXACTLY TWO WEEKS, BUT IT WAS

14:45:28 17 SHORTLY AFTER.

14:45:28 18 Q OKAY. SHORTLY AFTER. OKAY. THERE WAS A

14:45:31 19 SECOND INTERVIEW; IS THAT CORRECT?

14:45:33 20 A YES. YES.

14:45:35 21 Q AND WHEN YOU SAY, "SHORTLY THEREAFTER," YOU'RE

14:45:38 22 TALKING ABOUT MAYBE A WEEK OR SO OR -- I'M JUST

14:45:41 23 TRYING TO GET A SENSE OF IS IT A WEEK OR A COUPLE

14:45:43 24 OF MONTHS OR WHATEVER?

14:45:44 25 A MAYBE A WEEK, YEAH.

14:45:47 1 Q OKAY. SO THAT WOULD BE THE SECOND MEETING,

14:45:50 2 RIGHT?

14:45:50 3 A YES.

14:45:51 4 Q AND THAT ONE WENT ON FOR QUITE A WHILE, TOO;

14:45:56 5 ISN'T THAT CORRECT?

14:45:56 6 A YES.

14:45:58 7 Q IN FACT, THE SECOND MEETING, INTERVIEW, WAS

14:46:01 8 LONGER THAN THE FIRST ONE; ISN'T THAT CORRECT?

14:46:05 9 A I DIDN'T KEEP TRACK OF HOW LONG.

14:46:12 10 Q AND I FULLY UNDERSTAND THAT, AND I APPRECIATE

14:46:13 11 THAT.

14:46:16 12 BUT AS YOU SIT HERE DO YOU REMEMBER OR IS

14:46:22 13 YOUR BEST ESTIMATE THAT YOUR SECOND MEETING WAS

14:46:25 14 LONGER THAN THE FIRST ONE.

14:46:27 15 A PROBABLY IT WAS.

14:46:29 16 Q AND YOU ALSO, YOU AND THE PEOPLE INTERVIEWING

14:46:34 17 YOU, ALSO HAD TO TAKE A MEAL BREAK IN THE MIDDLE

14:46:39 18 THAT SECOND INTERVIEW; IS THAT CORRECT?

14:46:41 19 A YES.

14:46:41 20 Q AND YOU WERE INTERVIEWED A THIRD TIME IN EARLY

14:46:47 21 OCTOBER OF THIS YEAR; IS THAT CORRECT?

14:46:48 22 A NO.

14:46:58 23 Q YOU DON'T REMEMBER BEING INTERVIEWED ON

14:47:05 24 OCTOBER 4TH, 2001?

14:47:06 25 A LET ME -- I'M TRYING TO PUT THE TIME.

14:47:09 1 Q SURE. TAKE YOUR TIME, PLEASE.

14:47:16 2 A YES, I THINK, YES.

14:47:18 3 Q SO IT'S AROUND EARLY OCTOBER. YOU MAY NOT

14:47:21 4 REMEMBER THE EXACT DATE, BUT IT WAS EARLY OCTOBER?

14:47:23 5 A YES.

14:47:23 6 Q OF THIS YEAR?

14:47:24 7 A YES.

14:47:25 8 Q AND AGAIN, IT WAS A PRETTY LONG INTERVIEW,

14:47:27 9 WASN'T IT?

14:47:28 10 A YES.

14:47:28 11 Q AND YOU AND THE PEOPLE WHO WERE INTERVIEWING

14:47:33 12 YOU HAD TO TAKE A MEAL BREAK DURING THAT INTERVIEW

14:47:36 13 AS WELL; RIGHT?

14:47:37 14 A I DON'T RECALL.

14:47:45 15 Q THAT'S ALL I'M ENTITLED TO IS YOUR BEST

14:47:49 16 RECOLLECTION.

14:47:49 17 NOW, RECENTLY IN THE LAST COUPLE OF

14:47:52 18 WEEKS, YOU WERE INTERVIEWED A FOURTH TIME BY THE

14:47:57 19 GOVERNMENT PROSECUTORS AND THE CASE AGENT; IS THAT

14:48:00 20 CORRECT?

14:48:00 21 A YES.

14:48:01 22 Q AND WAS THAT THE LAST TIME THAT YOU WERE

14:48:03 23 INTERVIEWED ABOUT THIS CASE?

14:48:04 24 A YES.

14:48:05 25 Q NOW, DURING THOSE FOUR MEETINGS OR INTERVIEWS,

14:48:15 1 THE GOVERNMENT PROSECUTORS AND THE CASE AGENTS
14:48:17 2 ASKED YOU A LOT OF QUESTIONS ABOUT THIS CASE; IS
14:48:20 3 THAT CORRECT?
14:48:20 4 A YES.
14:48:22 5 Q AND THEY, OF COURSE, ASKED YOU A LOT OF
14:48:28 6 QUESTIONS ABOUT YOUR DEALINGS OR YOUR INTERACTIONS
14:48:30 7 WITH MR. LIGHTER; IS THAT CORRECT?
14:48:31 8 A YES?
14:48:39 9 Q AND, OF COURSE, YOU ANSWERED THEIR QUESTIONS
14:48:45 10 TRUTHFULLY AND COMPLETELY; ISN'T THAT CORRECT?
14:48:47 11 A I ANSWERED THEIR QUESTIONS TRUTHFULLY AND
14:48:51 12 COMPLETELY TO MY CAPABILITY.
14:48:52 13 Q NOW, I DON'T KNOW IF IT WAS ONE PERSON OR
14:49:02 14 DIFFERENT PEOPLE ASKED YOU QUESTIONS, BUT I'LL JUST
14:49:04 15 KIND OF SAY FOR THE PROSECUTION, MEANING IT COULD
14:49:06 16 BE MR. O'REILLY, MS. WONG, OR THE CASE AGENTS.
14:49:09 17 DO YOU UNDERSTAND THAT IF I USE THE WORD
14:49:12 18 "PROSECUTION" IT COULD REFER TO WHOEVER WAS
14:49:14 19 INTERVIEWING YOU?
14:49:15 20 A YES.
14:49:15 21 Q OKAY. THANK YOU.
14:49:16 22 NOW, THE PROSECUTION DURING THESE
14:49:19 23 INTERVIEWS ASKED YOU ABOUT THE TELEPHONE CALLS THAT
14:49:22 24 YOU MADE TO DR. IRWIN GOOTNICK THAT WE HAVE BEEN
14:49:27 25 HEARING YESTERDAY AND TODAY; IS THAT CORRECT?

14:49:29 1 A VERY FEW. THEY DIDN'T GO TOO MUCH INTO IT.

14:49:46 2 Q BUT THEY ASKED YOU ABOUT?

14:49:47 3 A YES.

14:49:47 4 Q AND YOU TOLD THEM THINGS, YOU TOLD THEM FACTS

14:49:50 5 ABOUT THESE PHONE CALLS; ISN'T THAT CORRECT?

14:49:51 6 A NO. I MEAN, I WAS NOT ASKED TOO MUCH ABOUT

14:50:12 7 THE PHONE CALL.

14:50:13 8 Q OKAY. BUT DID YOU TALK TO THEM ABOUT THE

14:50:15 9 PHONE CALLS AT ALL?

14:50:16 10 A YES.

14:50:16 11 Q OKAY. AND YOU WERE COMPLETELY TRUTHFUL WHEN

14:50:23 12 YOU TALKED ABOUT WHAT YOU KNEW ABOUT TELEPHONE

14:50:25 13 CALLS; RIGHT?

14:50:26 14 A IT'S MY MEMORY THAT I DON'T THINK WE EVER GET

14:50:41 15 INTO TOO MUCH ABOUT PHONE CALL, BUT WE SAY THAT

14:50:44 16 IT'S A PHONE CALL BETWEEN MYSELF AND GOOTNICK.

14:50:48 17 Q OKAY. SO YOU DID TALK ABOUT THE PHONE CALLS

14:50:50 18 THAT WE LISTENED TO TODAY AND YESTERDAY; IS THAT

14:50:52 19 CORRECT?

14:50:52 20 A YES.

14:50:53 21 Q OKAY. NOW, DO YOU REMEMBER YESTERDAY WHEN WE

14:51:03 22 WERE LISTENING TO THE TAPE, THERE WAS A PART WHERE

14:51:09 23 DR. GOOTNICK WAS ASKING YOU WHY -- DID

14:51:14 24 MR. LIGHTER -- DID ERIC LIGHTER TELL YOU TO CALL

14:51:17 25 ME? DID ERIC LIGHTER TELL YOU TO CALL ME? AND YOU

14:51:20 1 SAID SOMETHING TO THE FACT OF NO, NO, NO, NO.

14:51:23 2 DO YOU REMEMBER THAT PART OF THE
14:51:25 3 CONVERSATION?

14:51:25 4 A YES.

14:51:25 5 Q OKAY. AND, IN FACT, I'M GOING TO PUBLISH PAGE
14:51:46 6 11 OF EXHIBIT 13.

14:51:52 7 MS. WONG: YOUR HONOR, THIS DOCUMENT
14:51:53 8 ACTUALLY IS NOT YET ADMITTED.

14:51:56 9 MR. O'REILLY: HOW DO YOU WANT TO HANDLE
14:51:58 10 THAT?

14:51:59 11 MR. FONG: I'M SORRY. I THOUGHT IT WAS
14:52:00 12 ADMITTED BECAUSE WE SAW THE TRANSCRIPT SCROLLING.

14:52:04 13 SO I WOULD MOVE TO ADMIT INTO EVIDENCE
14:52:07 14 EXHIBIT 13. IS IT 13-A OR 13?

14:52:11 15 MR. O'REILLY: WHICH DAY?

14:52:13 16 MR. FONG: THE FIRST ONE, THE VERY FIRST
14:52:15 17 DAY.

14:52:15 18 MR. O'REILLY: THAT'S 13-A.

14:52:17 19 MS. WONG: 13-A.

14:52:19 20 MR. FONG: THE GOVERNMENT'S EXHIBIT 13-A.

14:52:21 21 THE COURT: THIS IS 13-A?

14:52:26 22 MR. FONG: THE ACTUAL TRANSCRIPT OF THE
14:52:28 23 TAPE RECORDING, THE VERY FIRST TAPE RECORDING ON
14:52:33 24 MARCH 3RD, 2006 AND THAT WAS THE TRANSCRIPT WAS
14:52:42 25 SCROLLING WHEN WE LISTENED TO THE TAPE.

14:52:44 1 THE COURT: SO IN ESSENCE, THE RECORDING
14:52:47 2 THAT IS NOW IN EVIDENCE ALSO INCLUDES AUDIO AND IT
14:52:51 3 ALSO INCLUDES THE VISUAL TRACKING, DOES IT?

14:52:56 4 MR. O'REILLY: ACTUALLY, YOUR HONOR, I
14:52:58 5 BELIEVE THAT WHAT IS IN EVIDENCE THAT THE JURY WILL
14:53:00 6 HAVE TO TAKE BACK IS SIMPLY THE RECORDING. IT'S
14:53:05 7 JUST THE AUDIO, CORRECT?

14:53:06 8 YEAH, IT WAS FOR VISUAL PRESENTATION
14:53:09 9 ONLY. AND, ACTUALLY, THE GOVERNMENT WOULD HAVE TO
14:53:11 10 NO OBJECTION IF MR. FONG WANTS TO -- IF YOU GIVE A
14:53:16 11 QUESTION THAT IS INCONSISTENT WITH THE TRANSCRIPT
14:53:17 12 AND THEN YOU WANT TO PUBLISH IT TO REFRESH HIS
14:53:20 13 RECOLLECTION OR SOMETHING, THE GOVERNMENT HAS NO
14:53:22 14 OBJECTION TO THAT.

14:53:26 17 MR. FONG: WHY DON'T WE DO IT THAT WAY.
14:53:28 18 I THINK THAT'S A VERY GOOD PROPOSAL, YOUR HONOR

14:53:32 19 THE COURT: THE OTHER ISSUE IS WHETHER OR
14:53:33 20 NOT THE JURY WILL RECEIVE THE ACTUAL TRANSCRIPT
14:53:36 21 WITH THEM, AND I THINK WE TALKED ABOUT THAT
14:53:37 22 PREVIOUSLY COUNSEL.

14:53:38 23 MB FONG: YES

14:53:39 24 THE COURT: WHICH IS MY RETICENCE TO
14:53:41 25 ADMIT ANYTHING IN RELATION TO THE TRANSCRIPT AT

14:53:44 1 THIS TIME. IT CERTAINLY CAN BE USED TO IMPEACH,
 14:53:46 2 REFRESH, BUT WHATEVER THAT NEEDS TO BE, BUT LET'S
 14:53:49 3 TAKE IT ON A QUESTION-BY-QUESTION BASIS.

14:53:51 4 MR. FONG: OKAY. ALL RIGHT.

14:53:52 5 Q LET ME ACTUALLY DO THIS THEN, WITHOUT
 14:53:55 6 PUBLISHING IT, LET ME SHOW YOU, DO YOU REMEMBER
 14:54:16 7 YESTERDAY IN LISTENING TO THE TAPE THAT THERE WAS A
 14:54:19 8 PART OF THE TAPE WHERE DR. GOOTNICK ASKED YOU, AND
 14:54:22 9 THIS WOULD HAVE BEEN FAIRLY EARLY ON, IT'S ONLY
 14:54:25 10 PAGE 11 AND 12 THE TRANSCRIPT, SO IT WOULD HAVE
 14:54:28 11 BEEN FAIRLY EARLY ON IN THE FIRST CALL IN WHICH
 14:54:31 12 DR. GOOTNICK SAYS, "SO, IN OTHER WORDS, SO LIGHTER
 14:54:36 13 TOLD YOU TO GET IN TOUCH WITH ME?"

14:54:38 14 AND YOU RESPONDED: "NO, NO."

14:54:40 15 AND DR. GOOTNICK SAID "BECAUSE HE CAN'T."

14:54:43 16 AND YOU SAID "NO."

14:54:44 17 AND DR. GOOTNICK SAID "BECAUSE HE CAN'T
 14:54:49 18 CALL ME?"

14:54:52 19 AND "NO."

14:54:54 20 AND DR. GOOTNICK SAID. "BECAUSE HE CAN'T
 14:54:57 21 CALL ME."

14:54:58 22 AND YOU REPLIED "NO, NO."

14:55:00 23 AND THEN DR. GOOTNICK SAID "YOU SAID."

14:55:04 24 AND YOUR REPLY WAS ONCE AGAIN, "NO."

14:55:07 25 DR. GOOTNICK SAID, "HE CAN'T CALL ME."

14:55:10 1 AND YOU SAID, "LIGHTER, LIGHTER DID NOT
14:55:14 2 ASK ME TO GET IN TOUCH WITH YOU."
14:55:19 3 DO YOU REMEMBER THAT PART OF THE RECORDED
14:55:21 4 TELEPHONE TAPE?
14:55:22 5 A YES.
14:55:22 6 Q AND LATER ON, DO YOU RECALL THAT MS. WONG
14:55:29 7 ASKED YOU A QUESTION ABOUT THAT PARTICULAR PASSAGE,
14:55:32 8 DO YOU REMEMBER THAT?
14:55:32 9 A YES.
14:55:32 10 Q AND DO YOU REMEMBER THAT YOU TESTIFIED TO THE
14:55:36 11 EFFECT THAT, WELL, YOU WERE NOT BEING TRUTHFUL WHEN
14:55:43 12 YOU WERE SAYING, NO, MR. LIGHTER DID NOT ASK ME TO
14:55:46 13 CALL YOU.
14:55:47 14 DO YOU REMEMBER THAT?
14:55:48 15 A YES.
14:55:54 16 Q AND NOW, IN THE INTERVIEW -- IN THE FOUR
14:56:01 17 INTERVIEWS THAT YOU HAD WITH THE GOVERNMENT, YOU
14:56:05 18 NEVER TOLD THE GOVERNMENT THAT, WELL, ON THE
14:56:07 19 MONITORED TELEPHONE CALL, ON THE TELEPHONE CALL
14:56:10 20 TAPES, THAT YOU NEVER TOLD THEM THAT YOU WERE LYING
14:56:14 21 ABOUT THE PART WHERE YOU SAID NO, NO, NO, LIGHTER
14:56:17 22 DID NOT TELL ME TO CALL YOU.
14:56:20 23 YOU DIDN'T TELL THE GOVERNMENT THAT, DID
14:56:22 24 YOU?
14:56:22 25 A BECAUSE THE SUBJECT DIDN'T COME UP.

14:56:28 1 Q BUT THE BOTTOM LINE IS THAT YOU DID NOT TELL
14:56:31 2 THE GOVERNMENT THAT IS?
14:56:36 3 A NO, I DID NOT.
14:56:37 4 Q AND, OF COURSE, YOU KNEW THAT IT WAS IMPORTANT
14:56:43 5 TO THE GOVERNMENT AS TO WHAT YOU BELIEVE
14:56:47 6 MR. LIGHTER HAD TOLD YOU TO DO AND WHAT YOU HAD
14:56:49 7 DONE ON YOUR OWN. YOU KNEW THAT, RIGHT?
14:56:53 8 A YES.
14:56:53 9 Q AND YOU DID NOT TELL THE GOVERNMENT THAT WHEN
14:57:01 10 YOU SAID NO, NO, NO --
14:57:07 11 MS. WONG: OBJECTION.
14:57:08 12 THE COURT: OVERRULED.
14:57:09 13 BY MR. FONG:
14:57:10 14 Q WHEN YOU SAID NO, NO, NO, MR. LIGHTER DID NOT
14:57:13 15 TELL ME TO CALL YOU, DR. GOOTNICK, YOU NEVER TOLD
14:57:16 16 THE GOVERNMENT THAT YOU THOUGHT THAT THAT PART --
14:57:19 17 THAT THAT ANSWER WAS FALSE AND THAT YOU HAD BEEN
14:57:22 18 INSTRUCTED BY MR. LIGHTER TO SAY THAT?
14:57:25 19 YOU NEVER SAID THAT, RIGHT?
14:57:27 20 A I'M TRYING TO UNDERSTAND THE QUESTION.
14:57:34 21 Q SURE. YOU DIDN'T TELL -- DURING THE FOUR
14:57:36 22 INTERVIEWS, YOU NEVER TOLD THE GOVERNMENT THAT YOU
14:57:41 23 HAD BEEN INSTRUCTED BY MR. LIGHTER TO DENY HIS
14:57:45 24 INVOLVEMENT, IF ANYBODY ASKED, ABOUT THE TELEPHONE
14:57:50 25 CALLS? YOU DIDN'T TELL THE GOVERNMENT THAT, DID

14:57:52 1 YOU?

14:57:52 2 A THAT WAS NOT ASKED.

14:57:53 3 Q AND -- BUT YOU DID NOT TELL THE GOVERNMENT?

14:57:58 4 MS. WONG: OBJECTION, ARGUMENTATIVE.

14:58:01 5 MR. FONG: YOUR HONOR, I'M JUST TRYING TO
14:58:03 6 GET AN ANSWER.

14:58:03 7 THE COURT: OVERRULED. YOU CAN ANSWER
14:58:05 8 THE QUESTION.

14:58:05 9 THE WITNESS: DURING THE CONVERSATION WE
14:58:11 10 DON'T HAVE TIME TO -- I DON'T THINK WE TALK ABOUT
14:58:15 11 THE CONVERSATION THAT I MENTIONED THE PHONE CALL..

14:58:21 12 BY MR. FONG:

14:58:22 13 Q BUT IS THE ANSWER -- AND CERTAINLY, CERTAINLY
14:58:25 14 YOU COULD EXPLAIN YOUR ANSWER BUT IS YOUR ANSWER
14:58:28 15 NO, YOU DID NOT TELL THE GOVERNMENT THAT
14:58:30 16 MR. LIGHTER, THAT YOUR ALLEGATION THAT MR. LIGHTER
14:58:34 17 HAD INSTRUCTED YOU TO DENY HIS INVOLVEMENT IN YOUR
14:58:36 18 CALLING DR. GOOTNICK? YOU DID NOT TELL THE
14:58:39 19 GOVERNMENT THAT?

14:58:40 20 A I DID NOT BECAUSE THE SUBJECT WASN'T
14:58:46 21 DISCUSSED.

14:58:46 22 Q SO THE ANSWER IS NO, YOU DID NOT; IS THAT
14:58:48 23 CORRECT?

14:58:48 24 A YES.

14:58:49 25 Q THANK YOU.

14:58:50 1 NOW, I WANT TO GO OVER THE PLEA AGREEMENT

14:59:14 2 A LITTLE BIT WITH YOU, MR. FUNG.

14:59:45 3 LET ME GIVE YOU A DOCUMENT THAT HAS NOW

14:59:47 4 BEEN MARKED AS DEFENDANT'S EXHIBIT C AS IN CAT FOR

14:59:56 5 IDENTIFICATION ONLY.

14:59:57 6 AND I BELIEVE THE GOVERNMENT HAS A COPY

14:59:59 7 OF THAT ALREADY, YOUR HONOR.

15:00:01 8 THE COURT: ALL RIGHT.

15:00:01 9 MS. WONG: YES, YOUR HONOR, WE DO.

15:00:37 10 BY MR. FONG:

15:00:37 11 Q AND, MR. FUNG, I DON'T WANT TO INTERRUPT YOU.

15:00:39 12 I JUST WANT TO LET YOU KNOW THAT I CERTAINLY DON'T

15:00:43 13 EXPECT YOU TO READ THE DOCUMENT FROM THE FRONT TO

15:00:48 14 THE END. I JUST WANT TO MAKE SURE YOU HAVE THE

15:00:50 15 DOCUMENT IN FRONT OF YOU TO REFRESH YOUR

15:00:52 16 RECOLLECTION; IS THAT ALL RIGHT?

15:00:53 17 A YES.

15:00:53 18 Q NOW, FIRST OF ALL, DO YOU RECOGNIZE THE

15:00:55 19 DOCUMENT THAT HAS BEEN MARKED AS DEFENDANT'S

15:00:57 20 EXHIBIT C?

15:00:58 21 A YES.

15:00:58 22 Q AND THAT'S THE PLEA AGREEMENT THAT YOU SIGNED

15:01:00 23 AT THE TIME THAT YOU ENTERED YOUR GUILTY PLEA TO

15:01:03 24 COUNT 1 IN THIS CASE; IS THAT CORRECT?

15:01:05 25 A YES.

15:01:06 1 Q OKAY. AND BEFORE YOU SIGNED THE PLEA
15:01:10 2 AGREEMENT, OF COURSE, YOU HAD READ IT CAREFULLY; IS
15:01:14 3 THAT CORRECT?
15:01:14 4 A YES.
15:01:14 5 Q AND YOU HAD GONE OVER IT WITH YOUR ATTORNEY SO
15:01:17 6 THAT TO MAKE SURE THAT YOU UNDERSTOOD THE ENTIRE
15:01:20 7 AGREEMENT; IS THAT CORRECT?
15:01:21 8 A YES.
15:01:21 9 Q OKAY. NOW, I'M NOT ASKING YOU TO LOOK UP
15:01:31 10 ANYTHING IN THE PLEA AGREEMENT. I JUST WANT TO ASK
15:01:33 11 YOU SOME QUESTIONS FIRST AND IF YOU DON'T REMEMBER,
15:01:36 12 THEN WE CAN CERTAINLY ASK YOU TO REFER TO THE PLEA
15:01:39 13 AGREEMENT.
15:01:39 14 COUNT 1 WAS ONLY ONE OF MANY COUNTS THAT
15:01:49 15 HAD BEEN -- THAT YOU HAD BEEN CHARGED WITH IN THE
15:01:52 16 SUPERSEDING -- IN THE THIRD SUPERSEDING INDICTMENT;
15:01:55 17 IS THAT CORRECT?
15:01:55 18 A YES.
15:01:55 19 Q AND COUNT 1 WAS A COUNT FOR CONSPIRACY TO
15:02:03 20 OBSTRUCT THE UNITED STATES FROM -- TO OBSTRUCT THE
15:02:08 21 UNITED STATES FROM TAKING ACTIONS --
15:02:10 22 MS. WONG: OBJECTION. MISSTATES THE
15:02:12 23 NATURE OF COUNT 1.
15:02:14 24 MR. FONG: OKAY.
15:02:17 25 THE COURT: I THINK IT'S IN FRONT OF YOU.

15:02:20 1 PERHAPS IT WOULD BE HELPFUL FOR THE WITNESS IF YOU
15:02:22 2 JUST REFERRED TO THE DOCUMENT.

15:02:23 3 MR. FONG: I'M SORRY. MS. WONG IS
15:02:28 4 ABSOLUTELY RIGHT.

15:02:29 5 Q COUNT 1 IS SIMPLY CONSPIRACY TO DEFRAUD THE
15:02:33 6 UNITED STATES; IS THAT CORRECT?

15:02:34 7 A YES.

15:02:34 8 Q NOW, YOU WERE ALSO CHARGED IN A LOT OF OTHER
15:02:40 9 COUNTS; IS THAT CORRECT?

15:02:41 10 A YES, YES.

15:02:42 11 Q OKAY. AND THOSE COUNTS WERE DISMISSED AFTER
15:02:49 12 YOU PLED GUILTY AND AFTER YOU ENTERED INTO THE
15:02:52 13 COOPERATION AGREEMENT WITH THE GOVERNMENT; IS THAT
15:02:54 14 CORRECT?

15:02:54 15 A YES, THEY DISMISSED ME.

15:03:06 16 Q THEY DROPPED. YOU DON'T HAVE TO WORRY ABOUT
15:03:08 17 THEM ANYMORE; IS THAT CORRECT?

15:03:09 18 A YES.

15:03:20 19 Q NOW, THE CHARGES THAT WERE DROPPED INCLUDE
15:03:24 20 WIRE FRAUD; IS THAT CORRECT?

15:03:25 21 A YES.

15:03:29 22 Q OKAY. AND WIRE FRAUD CARRIES A HIGHER MAXIMUM
15:03:35 23 SENTENCE THAN COUNT 1, THE CONSPIRACY TO DEFRAUD
15:03:40 24 THE UNITED STATES; IS THAT CORRECT?

15:03:42 25 MS. WONG: OBJECTION. IT MISSTATES THE

15:03:43 1 LAW.

15:03:44 2 THE COURT: SUSTAINED.

15:03:52 3 BY MR. FONG:

15:03:53 4 Q DO YOU KNOW THAT THE COUNT YOU PLED TO, COUNT

15:03:56 5 1, THAT IT CARRIED A MAXIMUM SENTENCE?

15:03:59 6 A YES.

15:04:01 7 Q AND WAS IT -- IT'S FIVE YEARS; IS THAT

15:04:05 8 CORRECT?

15:04:05 9 A YES.

15:04:06 10 Q NOW, SOME OF THE OTHER CHARGES THAT YOU WERE

15:04:14 11 CHARGED WITH, SOME OF THE OTHER COUNTS THAT YOU

15:04:16 12 WERE CHARGED WITH THAT WERE DROPPED, CARRY A HIGHER

15:04:19 13 MAXIMUM SENTENCE; IS THAT CORRECT?

15:04:20 14 A I NEED TO ASK MY ATTORNEY.

15:04:27 15 Q THAT'S OKAY. I'M JUST ASKING YOUR KNOWLEDGE.

15:04:30 16 DO YOU KNOW?

15:04:31 17 A I DON'T KNOW.

15:04:32 18 Q OKAY. NOW, IN THE PLEA AGREEMENT, YOU AND THE

15:04:36 19 GOVERNMENT AGREE TO A PARTICULAR, WHAT THEY, WHAT

15:04:43 20 THE FEDERAL COURTS CALL AN OFFENSE LEVEL; IS THAT

15:04:45 21 CORRECT?

15:04:45 22 A YES.

15:04:49 23 Q OKAY. AND THE OFFENSE LEVEL YOU UNDERSTOOD IS

15:04:56 24 A -- IS THE GUIDE BY WHICH YOU -- THE COURT WOULD

15:05:00 25 CALCULATE WHAT KIND OF A SENTENCE, WHAT KIND OF

15:05:04 1 SENTENCING RANGE IS RECOMMENDED THAT YOU WOULD
15:05:08 2 SERVE; IS THAT CORRECT?

15:05:09 3 A I'M NOT AN ATTORNEY SO I'M -- I ASSUME THAT
15:05:19 4 THAT'S CORRECT.

15:05:20 5 Q WELL, I DON'T WANT YOU TO ASSUME ANYTHING
15:05:22 6 BECAUSE OF WHAT I'M SAYING. I'M ASKING -- I'M
15:05:25 7 SIMPLY ASKING YOU, DID YOU HAVE AN UNDERSTANDING AT
15:05:28 8 THE TIME THAT YOU ENTERED INTO THE GUILTY PLEA IN
15:05:33 9 THIS PLEA AGREEMENT THAT YOU WOULD BE IN ESSENCE BE
15:05:37 10 FACING A PARTICULAR RANGE OF SENTENCE OF
15:05:46 11 IMPRISONMENT?

15:05:47 12 A YES.

15:05:47 13 Q AND IT WOULD BE -- FOR SOMEBODY WHO DOES NOT
15:05:50 14 HAVE ANY CRIMINAL RECORD, IT WOULD BE ABOUT 46 TO
15:05:53 15 57 MONTHS; RIGHT?

15:05:55 16 MS. WONG: OBJECTION -- WITHDRAWN.

15:06:06 17 BY MR. FONG:

15:06:07 18 Q IF YOU KNOW?

15:06:07 19 A I DON'T KNOW.

15:06:08 20 Q LET ME DIRECT YOUR ATTENTION TO PAGE 10 OF THE
15:06:10 21 PLEA AGREEMENT THAT HAS BEEN MARKED AS GOVERNMENT'S
15:06:12 22 EXHIBIT -- EXCUSE ME -- DEFENDANT'S EXHIBIT C.

15:06:27 23 A I'M SORRY?

15:06:28 24 Q PAGE 10 OF GOVERNMENT'S EXHIBIT C. NOT THE --
15:06:31 25 I APOLOGIZE. DEFENSE EXHIBIT C.

15:06:41 1 AND SPECIFICALLY, MR. FUNG, LINE 24 OF

15:06:46 2 EXHIBIT C.

15:07:11 3 A WHAT WAS THE QUESTION? I'M SORRY.

15:07:13 4 Q I JUST WANT TO DIRECT YOUR ATTENTION, DO YOU

15:07:15 5 SEE LINE 24?

15:07:17 6 A YES.

15:07:18 7 Q OKAY. AND DO YOU SEE WHERE IT SAYS ADJUSTED

15:07:24 8 OFFENSE LEVEL 23, DO YOU SEE THAT?

15:07:29 9 A YES.

15:07:29 10 Q AND NOW, DO YOU UNDERSTAND THE SIGNIFICANCE OF

15:07:34 11 THE NUMBER 23 FOR THE COUNT LEVEL?

15:07:38 12 A YES.

15:07:38 13 Q AND THE SIGNIFICANCE OF THAT, THERE'S A CHART

15:07:40 14 THAT THE U.S. COURT USES CALLED THE SENTENCING

15:07:43 15 GUIDELINES; IS THAT RIGHT?

15:07:44 16 A YES.

15:07:44 17 Q AND THEN DEPENDING ON THE LEVEL, AND IT GIVES

15:07:56 18 A NUMBER, AND THAT OFFENSE LEVEL 23 FOR SOMEBODY

15:07:59 19 WITHOUT CRIMINAL HISTORY, THE CHART WILL SHOW THAT

15:08:01 20 THE STARTING SENTENCE WOULD BE IN A PARTICULAR

15:08:05 21 RANGE; IS THAT YOUR UNDERSTANDING?

15:08:07 22 A YES, BUT I'M ALSO TOLD BY THE JUDGE THAT IT'S

15:08:22 23 THE JUDGE'S DECISION EVEN TO ADD A LOT MORE YEARS

15:08:26 24 TO IT OR WHATEVER.

15:08:27 25 Q RIGHT. EXCEPT THE GUIDELINES ARE ONLY ADVISED

15:08:30 1 TO THE COURT BUT IT'S THE STARTING POINT, RIGHT?

15:08:34 2 YOU UNDERSTOOD THAT, RIGHT?

15:08:35 3 A BUT YOU JUST SAID IT'S A GUIDELINE.

15:08:37 4 Q IT'S AN ADVISORY GUIDELINE. I DIDN'T MAKE IT.

15:08:43 5 IT'S AN ADVISORY GUIDELINE. AND I'M SORRY, I

15:08:46 6 SHOULDN'T HAVE A DIALOGUE WITH YOU.

15:08:48 7 A BUT YOU'RE TALKING REGARDING LANGUAGE. I'M

15:08:53 8 NOT A LAWYER, AND I AM NOT ABLE TO LOOK AT THAT.

15:08:56 9 Q OKAY. I APOLOGIZE.

15:08:58 10 LET ME ASK THE QUESTION, YOU HAD AN

15:09:00 11 EXPECTATION, WHEN YOU PLED GUILTY, THAT THE

15:09:01 12 STARTING POINT OF WHAT THE COURT WOULD CONSIDER AS

15:09:04 13 YOUR SENTENCE, WOULD BE ABOUT 46 TO 57 MONTHS; IS

15:09:09 14 THAT CORRECT? DID YOU HAVE THAT UNDERSTANDING?

15:09:10 15 A MY UNDERSTANDING IS THAT I DON'T KNOW AT THAT

15:09:18 16 TIME.

15:09:18 17 Q DID YOU HAVE ANY SENSE OF WHAT -- WHEN YOU

15:09:22 18 PLED GUILTY, THAT WHAT YOUR SENTENCE MIGHT BE?

15:09:27 19 A TO A CERTAIN EXTENT.

15:09:29 20 Q AND WHAT IS THAT CERTAIN EXTENT THAT YOU

15:09:31 21 UNDERSTOOD?

15:09:32 22 A WHATEVER THE JUDGE DECIDED AT THE SENTENCING.

15:09:39 23 Q SO YOU PLED GUILTY THINKING THAT YOUR SENTENCE

15:09:42 24 COULD BE ONE DAY OR A THOUSAND YEARS; IS THAT

15:09:45 25 CORRECT?

15:09:45 1 A IF I COULD LIVE A THOUSAND YEARS, YES.

15:09:52 2 Q OKAY. SO YOU DIDN'T HAVE ANY EXPECTATION THAT

15:09:55 3 THE STARTING POINT WOULD BE, OH, WELL, MAYBE

15:09:57 4 2 YEARS OR 18 YEARS OR 13 YEARS OR SOMEWHERE IN

15:10:04 5 BETWEEN? YOU DIDN'T HAVE ANY SENSE WHATSOEVER OF

15:10:06 6 WHAT YOU MIGHT BE LOOKING AT WHEN YOU PLED GUILTY?

15:10:08 7 A I DO KNOW I WOULD BE PUNISHED IF I DIDN'T TALK

15:10:18 8 TO YOU TO GUIDE ME. I'M SORRY?

15:10:20 9 Q NO, YOU ANSWERED THE QUESTION.

15:10:30 10 NOW, YOU ALSO KNEW THAT IN COOPERATING

15:10:32 11 WITH THE GOVERNMENT IN ITS PROSECUTION OF THIS

15:10:35 12 CASE, THAT YOU COULD GET A LOWER SENTENCE; IS THAT

15:10:37 13 CORRECT?

15:10:37 14 A I JUST KNEW THAT I NEEDED TO DO THE RIGHT

15:10:46 15 THING.

15:10:46 16 Q OKAY. AND THE RIGHT THING WOULD INCLUDE

15:10:49 17 HELPING YOURSELF TO GET A LOWER SENTENCE; IS THAT

15:10:51 18 CORRECT?

15:10:51 19 A AND IT COULD ALSO INCLUDE ALSO OTHER THINGS,

15:11:04 20 TOO.

15:11:04 21 Q BUT THAT COULD BE -- I'M SURE THAT'S TRUE.

15:11:07 22 BUT MY QUESTION THOUGH IS THIS, WHEN YOU

15:11:10 23 PLED GUILTY, YOU KNEW THAT YOU WOULD BE FACING VERY

15:11:16 24 POSSIBLY A TERM OF IMPRISONMENT IN THE FEDERAL

15:11:26 25 PRISON; IS THAT CORRECT?

15:11:26 1 A YES.

15:11:27 2 Q AND YOU DID NOT HAVE ANY IDEA WHEN YOU PLED

15:11:29 3 GUILTY IF THAT WAS GOING TO BE 6 MONTHS, OR

15:11:32 4 6 YEARS, OR 16 YEARS OR 12 MONTHS. YOU DIDN'T HAVE

15:11:37 5 ANY IDEA?

15:11:38 6 A I DO. I KNEW THAT IT WAS ONLY ONE COUNT.

15:11:44 7 Q AND IN YOUR MIND, WHAT DID YOU THINK THAT THAT

15:11:47 8 ONE COUNT WOULD MEAN IN TERMS OF WHAT YOU -- THE

15:11:50 9 POSSIBLE RANGE THAT YOU MIGHT BE LOOKING AT IN

15:11:53 10 TERMS OF WHAT YOU MIGHT BE FACING IN TERMS OF A

15:11:57 11 PRISON SENTENCE?

15:11:58 12 A BASED ON THE -- WHAT YOU JUST STATED THE

15:12:02 13 ADVISORY GUIDELINE AND WHAT THE JUDGE DECIDES.

15:12:06 14 Q OKAY. BUT IN TERMS OF A NUMBER, YOU HAVE NO

15:12:10 15 IDEA; IS THAT CORRECT?

15:12:10 16 A NO.

15:12:11 17 Q OKAY. SO YOU HAD NO IDEA? THAT'S CORRECT,

15:12:15 18 RIGHT, YOU HAD NO IDEA?

15:12:17 19 A NO.

15:12:17 20 Q OKAY. NOW, BUT YOU KNEW THAT BY COOPERATING,

15:12:21 21 YOU COULD HAVE A CHANCE TO EARN A LOWER SENTENCE;

15:12:25 22 IS THAT CORRECT?

15:12:25 23 A I DON'T KNOW.

15:12:34 24 Q OKAY. LET ME DIRECT YOUR ATTENTION TO DEFENSE

15:12:38 25 EXHIBIT C AGAIN, THE DOCUMENT IN FRONT OF YOU.

15:12:42 1 AND IF YOU COULD LOOK AT PAGE 11,
15:12:46 2 SPECIFICALLY, PARAGRAPH 10, WHICH IS LINES 27 AND
15:12:54 3 28.
15:12:55 4 IT'S TOWARDS THE BOTTOM OF THAT PAGE,
15:12:57 5 PAGE 11 OF THE DOCUMENT IN FRONT OF YOU.
15:12:59 6 IF YOU COULD PLEASE TAKE A MOMENT AND
15:13:02 7 LOOK AT THAT.
15:14:01 8 (PAUSE IN PROCEEDINGS.)
15:14:01 9 BY MR. FONG:
15:14:02 10 Q DO YOU SEE THAT PARAGRAPH, PARAGRAPH 10?
15:14:04 11 A YES.
15:14:04 12 Q AND YOU JUST READ THAT PARAGRAPH; IS THAT
15:14:06 13 TRUE?
15:14:07 14 A YES.
15:14:07 15 Q AND DOES THAT REFRESH YOUR RECOLLECTION AS TO
15:14:09 16 WHAT WAS YOUR UNDERSTANDING AT THE TIME THAT YOU
15:14:11 17 AGREED TO COOPERATE WITH THE GOVERNMENT, THAT IS TO
15:14:14 18 SAY, DID YOU KNOW THAT OR DID YOU UNDERSTAND THAT
15:14:20 19 BY COOPERATING, YOU COULD EARN A LOWER SENTENCE?
15:14:23 20 A YES.
15:14:23 21 Q OKAY. AND THAT WAS YOUR -- THAT WAS WHAT YOU
15:14:25 22 UNDERSTOOD, RIGHT?
15:14:26 23 A YES, BASED ON THE PARAGRAPH.
15:14:34 24 Q OKAY. NOW, YOU ALSO UNDERSTOOD AT THE TIME
15:14:40 25 THAT WHETHER OR NOT THE GOVERNMENT WOULD RECOMMEND

15:14:44 1 TO THE COURT TO GIVE YOU A LOWER SENTENCE IS
15:14:48 2 TOTALLY UP TO THE GOVERNMENT.

15:14:51 3 DID YOU UNDERSTAND THAT?

15:14:52 4 A YES, YES.

15:14:53 5 Q SO THAT IF YOU DISAGREE, THAT DOESN'T MATTER,
15:15:00 6 THAT IT'S UP TO THE GOVERNMENT AND THEY HAVE THE
15:15:02 7 SOLE AND EXCLUSIVE DECISION MAKING POWER TO
15:15:10 8 DETERMINE WHETHER OR NOT YOU HAVE EARNED ANY KIND
15:15:13 9 OF LOWER SENTENCE REDUCTION; IS THAT CORRECT?

15:15:15 10 A YES.

15:15:16 11 Q OKAY. AND THAT WHATEVER THE GOVERNMENT
15:15:20 12 DECIDES, YOU WOULD BE STUCK WITH THAT DECISION; IS
15:15:28 13 THAT CORRECT?

15:15:28 14 MS. WONG: OBJECTION, MISSTATES THE --
15:15:31 15 MISSTATEMENT. IT MISSTATES THE NATURE OF THE PLEA
15:15:35 16 AGREEMENT.

15:15:35 17 MR. FONG: I'M SIMPLY ASKING MR. FUNG'S
15:15:38 18 UNDERSTANDING.

15:15:41 19 THE COURT: WHY DON'T YOU GO OVER THAT
15:15:42 20 TOPIC AGAIN WITH HIM. IT CAN BE A LITTLE CONFUSING
15:15:46 21 FOR EVERYONE CONCERNED.

15:15:47 22 MR. FONG: SURE. SURE, YOUR HONOR.

15:15:50 23 THANK YOU.

15:15:50 24 Q EARLIER YOU JUST TESTIFIED THAT YOU UNDERSTOOD
15:15:57 25 THAT THE GOVERNMENT GETS TO DETERMINE WHETHER OR

15:16:01 1 NOT YOUR COOPERATION IS WORTH A LOWER SENTENCE; IS
15:16:06 2 THAT CORRECT?
15:16:06 3 A YES.
15:16:08 4 Q OKAY. AND THAT WHATEVER THE GOVERNMENT
15:16:11 5 DECIDES ON THAT ISSUE, THAT WOULD BE THE FINAL SAY
15:16:17 6 SO; IS THAT CORRECT?
15:16:18 7 A AND ALSO I REMEMBER THAT THE JUDGE SAID THAT
15:16:32 8 IT'S BASED ON HIS DISCRETION TO EVEN DEPORT ME.
15:16:34 9 Q BUT I'M NOT TALKING ABOUT, I'M NOT TALKING
15:16:37 10 ABOUT ANYTHING BUT YOUR COOPERATION.
15:16:40 11 I'M JUST TALKING ABOUT WHAT EFFECT, IF
15:16:44 12 ANY, YOUR COOPERATION WILL HAVE ON YOUR SENTENCE
15:16:46 13 AND ON THAT POINT DID YOU UNDERSTAND THAT THE
15:16:51 14 GOVERNMENT HAS THE ONLY DECISION OF WHETHER OR NOT
15:16:55 15 THAT YOU HAVE EARNED A DOWNWARD DEPARTURE SO THAT
15:17:00 16 THE GOVERNMENT WOULD MAKE THAT RECOMMENDATION TO
15:17:01 17 THE COURT?
15:17:02 18 A YES.
15:17:04 19 Q OKAY. SO THAT EVEN IF YOU DISAGREE WITH THE
15:17:09 20 GOVERNMENT, THERE'S NOTHING THAT YOU CAN DO.
15:17:15 21 AND AGAIN, I'M ONLY TALKING ABOUT THE
15:17:17 22 EFFECT OF COOPERATION ON YOUR SENTENCE, NOT ABOUT
15:17:20 23 ANY OTHER FACTORS.
15:17:24 24 A I GUESS, YES.
15:17:25 25 Q AND, AGAIN, WE DON'T WANT YOU TO GUESS. IS

15:17:31 1 THAT A YES?

15:17:32 2 A YES. THANK YOU.

15:17:37 3 THE COURT: LET'S TAKE A -- IS THIS A

15:17:39 4 GOOD PLACE TO TAKE A BREAK FOR ABOUT TEN MINUTES,

15:17:42 5 FOLKS. WE'LL TAKE A TEN-MINUTE BREAK.

15:17:44 6 WHILE YOU'RE OUT, I'M GOING TO POSE A

15:17:46 7 QUESTION TO YOU, LADIES AND GENTLEMEN OF THE JURY,

15:17:48 8 WHEN YOU RETURN.

15:17:49 9 THAT QUESTION IS GOING TO BE WHETHER OR

15:17:52 10 NOT IT COMPORTS WITH YOUR SCHEDULE TO ADJOURN TODAY

15:17:56 11 AT 4:30 AS OPPOSED TO 4:00 O'CLOCK AS I PROMISED

15:18:00 12 YOU. SO I'LL PUT THAT QUESTION TO YOU AND THEN YOU

15:18:03 13 CAN GIVE ME YOUR ANSWER WHEN YOU COME BACK.

15:18:06 14 WE'LL BE IN RECESS. THANK YOU.

15:18:08 15 (WHEREUPON, A RECESS WAS TAKEN.)

15:30:52 16 THE COURT: PLEASE BE SEATED. WE'RE BACK

15:30:52 17 ON THE RECORD IN THE LIGHTER MATTER. THE DEFENDANT

15:30:52 18 IS PRESENT AND OUR JURORS AND ALTERNATES ARE

15:30:52 19 PRESENT. THE PARTIES PREVIOUSLY PRESENT ARE

15:30:52 20 PRESENT ONCE AGAIN. MR. FUNG HAS RESUMED THE

15:30:52 21 WITNESS STAND.

15:30:52 22 BEFORE WE BEGIN I JUST WANT TO FIND OUT

15:30:52 23 OUR TIMING TODAY.

15:30:52 24 FOLKS, DOES ANYBODY HAVE ANY OBJECTION TO

15:30:52 25 GOING TO 4:30 TODAY AS OPPOSED TO 4:00 O'CLOCK?

15:30:52 1 JUROR: IS 4:30 A DEFINITIVE TIME? IT

15:30:52 2 WON'T BE LATER THAN THAT?

15:30:52 3 THE COURT: IT WOULD BE 4:30. PROBABLY

15:30:52 4 4:25.

15:30:52 5 JUROR: OKAY.

15:30:52 6 THE COURT: DOES ANYONE HAVE A CONFLICT?

15:30:52 7 I JUST WANT TO CAPTURE SOME TIME AND IF YOU'RE

15:30:53 8 AVAILABLE.

15:30:53 9 ALL RIGHT. FOLKS, LET'S GO TO 4:25 THIS

15:30:53 10 AFTERNOON.

15:30:53 11 ALL RIGHT. MR. FONG, DO YOU WANT TO

15:30:53 12 CONTINUE?

15:30:53 13 MR. FONG: YES.

15:30:53 14 Q MR. FUNG, I JUST HANDED TO YOU A DOCUMENT THAT

15:30:56 15 HAS BEEN MARKED AS DEFENDANT EXHIBIT J FOR

15:31:17 16 IDENTIFICATION PURPOSES.

15:31:18 17 AND, YOUR HONOR, COUNSEL HAS HAD AN

15:31:20 18 OPPORTUNITY TO SEE IT AND LOOK AT IT. AND I THINK

15:31:22 19 THE COURT HAS A COPY.

15:31:24 20 MR. FUNG, FIRST OF ALL, DO YOU SEE THAT

15:31:26 21 DOCUMENT IN FRONT OF YOU?

15:31:27 22 A YES.

15:31:27 23 Q OKAY. AND YOU HAVE SEEN THIS DOCUMENT BEFORE,

15:31:30 24 EXHIBIT J?

15:31:31 25 A YES.

15:31:32 1 Q AND IT'S THE THIRD SUPERSEDING INDICTMENT IN
15:31:35 2 THIS CASE; IS THAT CORRECT?
15:31:36 3 A YES.
15:31:37 4 Q AND THAT'S THE LAST INDICTMENT IN THIS CASE,
15:31:42 5 RIGHT, THE MOST RECENT ONE?
15:31:44 6 A YES.
15:31:44 7 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO THE
15:31:51 8 VERY LAST PAGE, PAGE 21 OF 21?
15:32:10 9 A YES.
15:32:11 10 Q AND EARLIER I BELIEVE YOU TESTIFIED THAT YOU
15:32:14 11 KNEW THAT YOU UNDERSTOOD THE COUNT THAT YOU PLED
15:32:17 12 GUILTY TO, COUNT 1, CONSPIRACY TO DEFRAUD THE
15:32:21 13 UNITED STATES, CARRIED A MAXIMUM SENTENCE OF
15:32:23 14 FIVE YEARS IN FEDERAL PRISON; IS THAT CORRECT?
15:32:25 15 A THE FIRST PAGE OF THE PLEA AGREEMENT, YES.
15:32:33 16 Q SO THAT'S FIVE YEARS.
15:32:36 17 AS I RECALL, YOU DID NOT REMEMBER, OR YOU
15:32:38 18 DID NOT REMEMBER WHAT THE -- WHAT THE MAXIMUM
15:32:41 19 SENTENCE WAS FOR SOME OF THE OTHER COUNTS THAT WERE
15:32:45 20 DROPPED AS A RESULT OF YOUR PLEA AGREEMENT WITH THE
15:32:47 21 GOVERNMENT; IS THAT CORRECT?
15:32:48 22 A I DON'T REMEMBER EVERYTHING.
15:32:59 23 Q AND THERE'S NO REASON TO. NOW, LET ME DIRECT
15:33:01 24 YOUR ATTENTION TO THE SECOND CHARGE ON THE VERY
15:33:04 25 LAST PAGE OF EXHIBIT J WHERE IT READS 18 U.S.C.

15:33:07 1 1343 WIRE FRAUD. DO YOU SEE THAT?

15:33:13 2 A YES.

15:33:13 3 Q OKAY. YOU WERE CHARGED ORIGINALLY IN THE

15:33:20 4 FIRST SUPERSEDING INDICTMENT WITH WIRE FRAUD; IS

15:33:22 5 THAT CORRECT?

15:33:22 6 A YES.

15:33:22 7 Q AND THAT WIRE FRAUD WAS DISMISSED OR DROPPED

15:33:25 8 AS PART OF YOUR PLEA AGREEMENT AND COOPERATION

15:33:27 9 AGREEMENT WITH THE GOVERNMENT; IS THAT CORRECT?

15:33:29 10 A YES.

15:33:29 11 Q AND THE WIRE FRAUD CHARGE CARRIES WITH IT A

15:33:37 12 MAXIMUM SENTENCE OF FIVE YEARS IN PRISON; IS THAT

15:33:45 13 CORRECT?

15:33:45 14 A YES.

15:33:45 15 Q AND DIRECTING YOUR ATTENTION TO THE FOURTH

15:33:47 16 ITEM, 18 U.S.C. SECTION 1512(B)(1), WITNESS

15:33:54 17 TAMPERING.

15:33:54 18 DO YOU SEE THAT ENTRY?

15:33:56 19 A YES.

15:33:56 20 Q OKAY. NOW, YOU WERE CHARGED, AMONG OTHER

15:34:01 21 COUNTS, WITH WITNESS TAMPERING IN THE THIRD

15:34:05 22 SUPERSEDING INDICTMENT; IS THAT CORRECT?

15:34:06 23 A YES.

15:34:09 24 Q AND THAT WAS ONE OF THE CHARGES THAT WAS

15:34:11 25 DROPPED OR DISMISSED AS A RESULT OF YOUR ENTERING

15:34:13 1 INTO THE PLEA AGREEMENT AND THE COOPERATION

15:34:16 2 AGREEMENT WITH THE GOVERNMENT; IS THAT CORRECT?

15:34:18 3 A YES.

15:34:19 4 Q AND THAT CHARGE, WITNESS TAMPERING, CARRIES

15:34:25 5 WITH IT A TEN YEAR -- OR EXCUSE ME -- CARRIES WITH

15:34:28 6 IT A MAXIMUM SENTENCE OF TEN YEARS IN FEDERAL

15:34:31 7 PRISON; IS THAT CORRECT?

15:34:32 8 A YES.

15:34:36 9 Q SO THE COUNT THAT YOU DID PLEAD GUILTY TO,

15:34:42 10 CONSPIRACY TO DEFRAUD THE UNITED STATES, CARRIES

15:34:45 11 WITH IT A FIVE-YEAR MAXIMUM SENTENCE. THE OTHER --

15:34:47 12 TWO OF THE OTHER COUNTS CARRY WITH A 10 YEAR

15:34:50 13 MAXIMUM AND A 20 YEAR MAXIMUM; IS THAT CORRECT?

15:34:53 14 A YES.

15:34:53 15 Q NOW, DIRECTING YOUR ATTENTION -- ACTUALLY --

15:35:19 16 EXCUSE ME ONE SECOND. DIRECTING YOUR -- MR. FUNG,

15:35:35 17 IN YOUR PLEA AGREEMENT YOU ADMITTED TO FILING AND

15:35:40 18 PREPARING FALSE TAX RETURNS FOR A GROUP OF

15:35:45 19 INDIVIDUALS, YOUR CLIENTS SO TO SPEAK; IS THAT

15:35:47 20 CORRECT?

15:35:47 21 A AND LET ME GO OVER THOSE WITH YOU.

15:35:58 22 OH, YOU GAVE ME BACK A COPY OF THE PLEA

15:36:00 23 AGREEMENT.

15:36:17 24 NOW, I WANT TO DIRECT YOUR ATTENTION TO

15:36:19 25 PAGE 3 OF THE PLEA AGREEMENT WHICH HAS BEEN MARKED

15:36:21 1 AS DEFENDANT'S EXHIBIT C.

15:36:24 2 MS. WONG: OBJECTION. THE FORM OF THE
15:36:25 3 QUESTION.

15:36:25 4 MR. FONG: I DON'T THINK THERE WAS A
15:36:27 5 QUESTION.

15:36:27 6 MS. WONG: IT'S IMPROPER -- IT'S IMPROPER
15:36:30 7 EITHER REFRESHING OR IMPEACHMENT BECAUSE HE HASN'T
15:36:33 8 BEEN ASKED IF HE RECALLS THE TAX RETURNS.

15:36:38 9 THE COURT: ARE YOU ABOUT TO ASK HIM A
15:36:40 10 QUESTION?

15:36:40 11 MR. FONG: YES, YOUR HONOR.

15:36:41 12 THE COURT: OKAY. YOU'VE TAKEN A
15:36:43 13 PREEMPTORY STRIKE AS TO HIS POTENTIAL ANSWER.

15:36:46 14 WHY DON'T YOU ASK THE QUESTION BEFORE HE
15:36:48 15 REFERS TO THE DOCUMENT.

15:36:49 16 MR. FONG: SURE. OKAY.

15:36:53 17 Q IN YOUR PLEA AGREEMENT, YOU ADMITTED TO
15:36:55 18 FALSIFYING CERTAIN TAX RETURNS -- OR EXCUSE ME, I'M
15:37:05 19 SORRY.

15:37:06 20 IN YOUR PLEA AGREEMENT YOU ADMITTED TO
15:37:07 21 PREPARING AND FILING WITH YOUR CLIENTS CERTAIN TAX
15:37:12 22 RETURNS; IS THAT CORRECT?

15:37:12 23 A CAN YOU REPEAT THE QUESTION?

15:37:18 24 Q SURE. IN YOUR PLEA AGREEMENT, ONE OF THE
15:37:19 25 THINGS YOU ADMITTED TO WAS THAT YOU PREPARED AND

15:37:25 1 FILED FALSE TAX RETURNS WITH YOUR CLIENTS?

15:37:29 2 A AND FILED? I MEAN, THE CLIENT FILED IT

15:37:31 3 THEMSELVES.

15:37:32 4 Q OKAY. THEN YOU PREPARED IT?

15:37:33 5 A YEAH.

15:37:33 6 Q ALL RIGHT. NOW, ONE OF THOSE WAS DR. MORRIS

15:37:39 7 BROCK AND CATHERINE HANEY; IS THAT CORRECT?

15:37:41 8 A YES.

15:37:41 9 Q AND THAT WAS FOR B & B TRUST FOR THE YEAR

15:37:50 10 1999; IS THAT CORRECT?

15:37:51 11 A YES.

15:37:51 12 Q OKAY. NOW, AS TO THAT RETURN, THE 1999 B & B

15:37:56 13 TRUST TAX RETURN, YOU HAD PREPARED THAT; IS THAT

15:37:58 14 CORRECT?

15:37:58 15 A YES, BASED ON THE CLIENT'S INFORMATION.

15:38:06 16 Q BASED ON THE CLIENT'S INFORMATION?

15:38:09 17 MR. LIGHTER, ERIC LIGHTER, HAD ABSOLUTELY

15:38:12 18 NOTHING TO DO WITH THAT RETURN; IS THAT RIGHT?

15:38:15 19 A YES.

15:38:15 20 Q AND YOU ALSO FILED -- OR EXCUSE ME. YOU ALSO

15:38:18 21 PREPARED, BASED ON INFORMATION THAT YOUR CLIENTS

15:38:22 22 PROVIDED TO YOU IN 1999, A TAX RETURN FOR AN ENTITY

15:38:28 23 BY THE NAME OF INSIGHT COMPANY TRUST; IS THAT

15:38:31 24 CORRECT?

15:38:31 25 A YES.

15:38:32 1 Q AND THAT WAS A TRUST THAT WAS OWNED OR
15:38:35 2 CONTROLLED BY DR. MORRIS BROCK AND DR. CATHERINE
15:38:39 3 HANEY; IS THAT CORRECT?
15:38:40 4 A YES.
15:38:41 5 Q AND THAT WAS DONE IN A 1041 RETURN FORM, TAX
15:38:47 6 RETURN FORM; IS THAT CORRECT?
15:38:48 7 A YES.
15:38:48 8 Q OKAY. AND THAT WAS A FALSE RETURN?
15:38:51 9 A YES, IT'S CONSIDERED FALSE.
15:38:58 10 Q BUT YOU ADMITTED THAT IT WAS FALSE IN YOUR
15:39:01 11 PLEA AGREEMENT, DID YOU NOT?
15:39:02 12 A YES.
15:39:02 13 Q OKAY. NOW, MR. LIGHTER HAD NOTHING TO DO WITH
15:39:06 14 THAT RETURN; IS THAT CORRECT?
15:39:07 15 A YES.
15:39:08 16 Q AND HE HAD ABSOLUTELY NOTHING, RIGHT?
15:39:11 17 A IT'S MY UNDERSTANDING THAT THE DEFENDANT HAD
15:39:21 18 TO REVIEW ALL OF THE RETURNS AND AMENDED RETURNS.
15:39:29 19 Q MR. FUNG, I'M TALKING ABOUT THE 1999 RETURN
15:39:33 20 THAT WAS FILED IT LOOKS LIKE SOME TIME IN OCTOBER
15:39:36 21 OF 2000?
15:39:37 22 A YES.
15:39:38 23 Q YOU'RE NOT SAYING THAT MR. LIGHTER HAD
15:39:40 24 ANYTHING TO DO WITH THE PREPARATION AND THE FILING
15:39:42 25 OF THAT TAX RETURN, ARE YOU?

15:39:49 1 A NO.

15:39:49 2 Q BECAUSE, OF COURSE, IN OCTOBER OF 2000, YOU

15:39:52 3 HAD NOT EVEN MET MR. LIGHTER; IS THAT CORRECT?

15:39:57 4 A YES.

15:39:57 5 Q AND TO THE BEST OF YOUR KNOWLEDGE, IN OCTOBER

15:39:59 6 OF 2000, WHEN THIS RETURN WAS FILED FOR INSIGHT

15:40:04 7 COMPANY TRUST, TO THE BEST OF YOUR KNOWLEDGE,

15:40:06 8 DR. MORRIS BROCK AND DR. CATHERINE HANEY HAD NOT

15:40:08 9 MET MR. LIGHTER?

15:40:10 10 A CORRECT.

15:40:10 11 Q NOW, YOU ALSO FILED A 2000 RETURN FOR B & B

15:40:24 12 TRUST; IS THAT CORRECT?

15:40:25 13 A YES.

15:40:25 14 Q AND, NOW, THAT WAS ALSO A FALSE TAX RETURN

15:40:28 15 THAT YOU PREPARED; IS THAT CORRECT?

15:40:29 16 A YES.

15:40:29 17 Q AND, AGAIN, MR. LIGHTER HAD ABSOLUTELY NOTHING

15:40:31 18 TO DO WITH THE PREPARATION OR THE FILING OF THAT

15:40:34 19 FALSE TAX RETURN; IS THAT CORRECT?

15:40:36 20 A CORRECT.

15:40:36 21 Q EXCUSE ME. YOU ALSO PREPARED, WITH THE

15:40:50 22 INFORMATION PROVIDED BY YOUR CLIENTS, A 2000 1041

15:40:54 23 TAX RETURN FOR INSIGHT COMPANY TRUST; IS THAT

15:40:57 24 CORRECT?

15:40:57 25 A YES.

15:40:57 1 Q AND AGAIN, THAT WAS A FALSE TAX RETURN; IS
15:41:01 2 THAT CORRECT?
15:41:01 3 A YES.
15:41:07 4 Q AND AGAIN, MR. LIGHTER HAD ABSOLUTELY NOTHING
15:41:09 5 TO DO WITH THE PREPARATION FOR THE FILING OF THAT
15:41:11 6 RETURN; IS THAT CORRECT?
15:41:12 7 A YES.
15:41:19 8 Q NOW, YOU ALSO PREPARED A 2001 B & B TRUST TAX
15:41:22 9 RETURN ON BEHALF OF DR. MORRIS BROCK AND
15:41:25 10 DR. CATHERINE HANEY; IS THAT CORRECT?
15:41:27 11 A YES.
15:41:27 12 Q AND THAT WAS A FALSE TAX RETURN THAT YOU
15:41:36 13 PREPARED; IS THAT CORRECT?
15:41:36 14 A YES.
15:41:37 15 Q AND AGAIN, MR. LIGHTER HAD ABSOLUTELY NOTHING
15:41:39 16 TO DO WITH THE PREPARATION OR THE FILING OF THAT
15:41:41 17 TAX RETURN?
15:41:42 18 A CORRECT.
15:41:47 19 Q YOU ALSO FILED A 2001 INSIGHT COMPANY TRUST
15:41:51 20 1041 TAX RETURN ON BEHALF OF DR. MORRIS BROCK AND
15:41:55 21 DR. CATHERINE HANEY; IS THAT CORRECT?
15:42:05 22 A YES.
15:42:05 23 Q AND THAT WAS A FALSE RETURN?
15:42:07 24 A YES.
15:42:07 25 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:42:09 1 WITH THE FILING OF THAT RETURN?

15:42:13 2 A YES.

15:42:13 3 Q NOW, YOU ALSO FILED A 1998 MCKENZIE RESIDENCY

15:42:32 4 TRUST RETURN; IS THAT CORRECT?

15:42:34 5 A YES.

15:42:34 6 Q AND THAT WAS ALSO A FALSE RETURN?

15:42:36 7 A YES.

15:42:36 8 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:42:38 9 WITH THE PREPARATION OR FILING OF THAT FILING OF

15:42:41 10 THAT FALSE TAX RETURN?

15:42:50 11 A CORRECT.

15:42:50 12 Q AND YOU ALSO FILED A 1999 MCKENZIE TRUST TAX

15:42:55 13 RETURN?

15:42:55 14 A I DID NOT FILE.

15:42:56 15 Q I STAND CORRECTED. YOU PREPARED THE 1999

15:43:00 16 MCKENZIE FAMILY TRUST RETURN; IS THAT CORRECT?

15:43:02 17 A YES.

15:43:03 18 Q AND BASED ON THE INFORMATION THAT YOUR CLIENTS

15:43:05 19 GAVE YOU?

15:43:06 20 A YES.

15:43:06 21 Q OKAY. AND THAT WAS A FALSE TAX RETURN?

15:43:08 22 A YES.

15:43:09 23 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:43:13 24 WITH THE PREPARATION OR THE FILING OF THAT TAX

15:43:15 25 RETURN?

15:43:15 1 A CORRECT.

15:43:16 2 Q AND SO FAR OF ALL OF THE RETURNS THAT WE HAVE

15:43:20 3 TALKED ABOUT, THESE WERE ALL N.T.S. TYPE OF TRUST

15:43:24 4 RETURNS; IS THAT CORRECT?

15:43:25 5 A YES.

15:43:25 6 Q NOW, YOU ALSO FILED A 1999 MCKENZIE FAMILY

15:43:34 7 RESIDENCE TRUST 1041 RETURN; IS THAT CORRECT?

15:43:37 8 A YES.

15:43:37 9 Q AND THAT WAS A FALSE RETURN?

15:43:43 10 A YES.

15:43:44 11 THE COURT: I'M SORRY. WAS THE QUESTION

15:43:46 12 FILING?

15:43:46 13 MR. FONG: THANK YOU, YOUR HONOR. I KEEP

15:43:48 14 DOING IT. LET ME START OVER.

15:43:50 15 Q YOU PREPARED A 1999 MCKENZIE FAMILY RESIDENCE

15:43:55 16 TRUST TAX RETURN?

15:43:56 17 A YES.

15:43:57 18 Q AND AS FAR AS YOU KNOW THAT WAS FILED?

15:44:05 19 A YES.

15:44:05 20 Q AND THAT WAS A FALSE TAX RETURN?

15:44:08 21 A YES.

15:44:08 22 Q AND THAT WAS AN N.T.S. FALSE TAX RETURN?

15:44:12 23 A YES.

15:44:12 24 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:44:14 25 WITH THE PREPARATION OR THE FILING OF THAT TAX

15:44:16 1 RETURN?

15:44:16 2 A CORRECT.

15:44:16 3 Q AND YOU FILED A -- YOU PREPARED A 2000

15:44:23 4 MCKENZIE TRUST RETURN; IS THAT CORRECT?

15:44:25 5 A YES.

15:44:32 6 Q AND THAT WAS A FALSE TAX RETURN?

15:44:34 7 A YES.

15:44:34 8 Q AND THAT WAS AN N.T.S. TYPE OF RETURN?

15:44:36 9 A YES.

15:44:36 10 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:44:39 11 WITH THE PREPARATION OF THE FILING OF THAT RETURN?

15:44:41 12 A CORRECT.

15:44:41 13 Q AND YOU PREPARED A 2000 MCKENZIE FAMILY

15:44:46 14 RESIDENCE TRUST TAX RETURN?

15:44:49 15 A YES.

15:44:50 16 Q AND THAT WAS A FALSE TAX RETURN?

15:44:53 17 A YES.

15:44:54 18 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:44:57 19 WITH THAT?

15:44:58 20 A CORRECT.

15:44:58 21 Q I'M SORRY?

15:45:03 22 A CORRECT.

15:45:04 23 Q THANK YOU. YOU ALSO FILED A 1998 ALPHA

15:45:07 24 SERVICES TRUST -- EXCUSE ME. LET ME START AGAIN.

15:45:10 25 YOU ALSO PREPARED A 1998 ALPHA SERVICES

15:45:13 1 TRUST TAX RETURN; IS THAT CORRECT?

15:45:15 2 A YES.

15:45:16 3 Q AND THAT WAS A FALSE TAX RETURN?

15:45:18 4 A YES.

15:45:19 5 Q AND THAT WAS AN N.T.S. TYPE OF RETURN?

15:45:22 6 A YES.

15:45:23 7 Q AND THAT IS WHY IT WAS FALSE?

15:45:25 8 A YES.

15:45:25 9 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:45:28 10 WITH THE PREPARATION OR THE FILING OF THAT RETURN?

15:45:32 11 A CORRECT.

15:45:32 12 Q AND YOU ALSO ADMITTED THAT YOU HAD PREPARED A

15:45:39 13 1998 DANCING BEAR TRUST TAX RETURN?

15:45:45 14 A YES.

15:45:45 15 Q AND THAT WAS A FALSE TAX RETURN?

15:45:47 16 A YES.

15:45:48 17 Q AND THAT WAS AN N.T.S. TYPE OF TAX RETURN?

15:45:51 18 A YES.

15:45:52 19 Q AND THAT IS WHY IT WAS FALSE?

15:45:54 20 A YES.

15:45:55 21 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:45:58 22 WITH THE PREPARATION OR FILING OF THAT TAX RETURN?

15:46:02 23 A CORRECT.

15:46:06 24 Q AND YOU PREPARED IN 1998, AS WELL AS 1999 AND

15:46:12 25 2000, RPH MANAGEMENT TRUST TAX RETURNS FOR THOSE

15:46:16 1 THREE YEARS; IS THAT CORRECT?

15:46:17 2 A YES.

15:46:18 3 Q AND THOSE WERE ALL FALSE TRUST TAX RETURNS?

15:46:25 4 A YES.

15:46:26 5 Q AND THEY WERE ALL FALSE TYPE OF NATIONAL TRUST

15:46:29 6 SERVICES TAX RETURNS?

15:46:30 7 A CORRECT.

15:46:30 8 Q AND THAT'S WHY THEY WERE FALSE?

15:46:31 9 A YES.

15:46:31 10 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:46:33 11 WITH THE PREPARATION OR FILING OF THOSE THREE TAX

15:46:36 12 RETURNS?

15:46:37 13 A CORRECT. CORRECT.

15:46:45 14 Q YOU ALSO ADMITTED TO PREPARING A 2000

15:46:48 15 SPRINGFIELD TRUST TAX RETURN; IS THAT CORRECT?

15:46:50 16 A YES.

15:46:50 17 Q AND THAT WAS A FALSE TAX RETURN?

15:46:53 18 A YES.

15:46:53 19 Q AND BECAUSE IT WAS AN N.T.S. TYPE OF TAX

15:46:56 20 RETURN?

15:46:56 21 A YES.

15:46:56 22 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:46:59 23 WITH THE PREPARATION OR FILING OF THAT PARTICULAR

15:47:03 24 TAX TRUST RETURN?

15:47:03 25 A CORRECT.

15:47:04 1 Q YOU ALSO ADMITTED TO PREPARING A 2000, E AND B
15:47:16 2 TAX RETURN; IS THAT CORRECT?
15:47:18 3 A YES.
15:47:19 4 Q AND THAT WAS A FALSE TAX RETURN?
15:47:22 5 A YES.
15:47:22 6 Q AND THAT WAS A FALSE TAX RETURN BECAUSE IT WAS
15:47:25 7 AN N.T.S. TRUST RETURN?
15:47:28 8 A YES.
15:47:29 9 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO
15:47:31 10 WITH THE PREPARATION OR THE FILING OF THAT
15:47:33 11 PARTICULAR RETURN?
15:47:34 12 A CORRECT.
15:47:34 13 Q YOU ALSO PREPARED A 2000 MG TRUST RETURN; IS
15:47:43 14 THAT CORRECT?
15:47:43 15 A YES.
15:47:43 16 Q AND THAT MG TRUST BELONGED TO JEAN-PAUL
15:47:53 17 BOURDIER AND HIS WIFE MINH HA TRINH; IS THAT
15:47:55 18 CORRECT?
15:47:55 19 A YES.
15:47:56 20 Q AND THAT WAS A FALSE TAX RETURN?
15:47:58 21 A YES.
15:47:58 22 Q AND THAT WAS A FALSE TAX RETURN BECAUSE IT WAS
15:48:00 23 AN N.T.S. TYPE OF RETURN?
15:48:02 24 A YES.
15:48:02 25 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:48:05 1 WITH THE PREPARATION OR THE FILING OF THAT RETURN;

15:48:11 2 IS THAT CORRECT?

15:48:11 3 A CORRECT.

15:48:11 4 Q YOU FILED A 2000 NINJACO, N-I-N-J-A-C-O, TRUST

15:48:22 5 TAX RETURN; IS THAT CORRECT?

15:48:23 6 A I PREPARED IT.

15:48:24 7 Q I'M SORRY?

15:48:26 8 A DID YOU SAY FILE?

15:48:27 9 Q YOU KNOW, IF I DID, I APOLOGIZE. OF COURSE I

15:48:30 10 MEANT PREPARED. YOU WOULD THINK I WOULD LEARN BY

15:48:32 11 NOW, BUT I APOLOGIZE. LET ME ASK THE QUESTION OVER

15:48:35 12 AGAIN.

15:48:35 13 YOU ADMITTED TO PREPARING A 2000 NINJACO

15:48:39 14 TRUST TAX RETURN; IS THAT CORRECT?

15:48:40 15 A CORRECT.

15:48:47 16 Q AND THAT WAS A FALSE TAX RETURN?

15:48:49 17 A YES.

15:48:49 18 Q AND THAT WAS A TRUST BY JEAN-PAUL BOURDIER AND

15:48:52 19 MINH HA TRINH; IS THAT CORRECT?

15:48:54 20 A CORRECT.

15:48:54 21 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:48:57 22 WITH THE PREPARATION OR THE FILING OF THAT TAX

15:48:59 23 RETURN; IS THAT CORRECT?

15:49:00 24 A CORRECT.

15:49:00 25 Q AND YOU ALSO ADMITTED IN YOUR PLEA AGREEMENT

15:49:02 1 THAT YOU HAD PREPARED A 2000 MUDRACHI,
15:49:17 2 M-U-D-R-A-C-H-I, TRUST TAX RETURN?
15:49:21 3 A YES.
15:49:21 4 Q AND THAT WAS A FALSE TAX RETURN?
15:49:22 5 A YES.
15:49:23 6 Q AND THAT WAS A TRUST THAT WAS ALSO CONTROLLED
15:49:25 7 OR OWNED BY JEAN-PAUL BOURDIER AND MINH HA TRINH;
15:49:28 8 IS THAT CORRECT?
15:49:29 9 A CORRECT.
15:49:29 10 Q AND THAT WAS AN N.T.S. TRUST TAX RETURN?
15:49:37 11 A CORRECT.
15:49:37 12 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO
15:49:39 13 WITH THE PREPARATION OR FILING OF THAT PARTICULAR
15:49:49 14 RETURN?
15:49:49 15 A CORRECT.
15:49:49 16 Q AND YOU ALSO ADMITTED TO PREPARING A 1998
15:49:54 17 MALIDON, M-A-L -- M-A-L-I-D-O-N TRUST RETURN?
15:50:04 18 A YES.
15:50:04 19 Q AND THAT WAS A FALSE TAX RETURN?
15:50:06 20 A YES.
15:50:07 21 Q AND THAT WAS BECAUSE IT WAS AN N.T.S. TRUST
15:50:09 22 RETURN?
15:50:10 23 A CORRECT.
15:50:10 24 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO
15:50:12 25 WITH THE PREPARATION OR FILING OF THAT PARTICULAR

15:50:17 1 RETURN?

15:50:17 2 A CORRECT.

15:50:17 3 Q YOU ALSO FILED A GROUP OF TRUST RETURNS FOR

15:50:29 4 RILEY AND JOYCE PENDERGRAFT; IS THAT CORRECT?

15:50:32 5 A I DID NOT FILE.

15:50:33 6 Q I'M SORRY?

15:50:34 7 A I'M SORRY.

15:50:37 8 Q THANK YOU FOR CORRECTING ME. YOU PREPARED IT

15:50:41 9 LOOKS LIKE ABOUT SEVEN TRUST RETURNS FOR RILEY AND

15:50:47 10 GEORGE PENDERGRAFT FOR 1998 THROUGH THE YEAR 2000;

15:50:53 11 IS THAT CORRECT?

15:50:54 12 A CORRECT.

15:50:54 13 Q AND THESE WERE ALL, EACH AND EVERY ONE OF THEM

15:50:57 14 WAS A FALSE TAX RETURN?

15:50:59 15 A CORRECT.

15:50:59 16 Q AND MR. LIGHTER HAD ABSOLUTELY NOTHING TO DO

15:51:02 17 WITH ANY OF THOSE RETURNS?

15:51:03 18 A CORRECT.

15:51:04 19 Q AND THAT WOULD BE TRUE -- WELL, LET ME ASK YOU

15:51:23 20 TO LOOK AT PAGE 5 OF YOUR PLEA AGREEMENT?

15:51:24 21 THE COURT: DO YOU WANT TO ASK IT FIRST

15:51:27 22 AND THEN YOU CAN REFERENCE THE AGREEMENT?

15:51:28 23 MR. FONG: SURE.

15:51:31 24 Q THE -- YOU -- OKAY. LET ME START OVER. YOU

15:51:39 25 ALSO PREPARED IT LOOKS LIKE ONE, TWO, THREE, FOUR

15:51:46 1 TAX RETURNS FOR ELAINE CAMPBELL IN 2001 AND 2002;

15:51:50 2 IS THAT CORRECT?

15:51:50 3 A YES.

15:51:51 4 Q AND THOSE WERE FALSE TAX RETURNS?

15:51:53 5 A YES.

15:51:53 6 Q AND THEY WERE FALSE BECAUSE THEY WORKED ON THE

15:52:00 7 SAME PRINCIPLE AS THE N.T.S. TRUST RETURNS; IS THAT

15:52:04 8 CORRECT?

15:52:04 9 A THAT'S CORRECT.

15:52:04 10 Q AND OF THOSE FOUR RETURNS, MR. LIGHTER HAD

15:52:06 11 NOTHING TO DO WITH THE PREPARATION OR FILING OF ANY

15:52:09 12 OF THE FOUR RETURNS?

15:52:10 13 A CORRECT.

15:52:11 14 Q AND THAT WOULD BE TRUE FOR ANY OF THE RETURNS

15:52:22 15 THAT YOU ADMITTED TO IN YOUR PLEA AGREEMENT THAT

15:52:27 16 YOU ADMITTED TO PREPARING FALSE TAX RETURNS, THAT

15:52:30 17 WOULD BE TRUE FOR EVERY ONE OF THEM; IS THAT

15:52:35 18 CORRECT?

15:52:36 19 THE COURT: WHICH?

15:52:39 20 BY MR. FONG:

15:52:39 21 Q THAT MR. LIGHTER HAD NOTHING TO DO WITH THE

15:52:41 22 PREPARATION OR THE FILING OF ANY OF THESE TAX

15:52:43 23 RETURNS?

15:52:44 24 A CORRECT.

15:52:44 25 Q NOW, SOME TIME IN MAY OF 2002, YOU SENT A

15:53:05 1 BUNCH OF DOCUMENTS TO THE CID OF THE I.R.S. IN

15:53:11 2 WASHINGTON, D.C.; IS THAT CORRECT?

15:53:12 3 A YES.

15:53:13 4 Q OKAY. AND THAT -- IT WAS CONTAINED IN SEVERAL

15:53:20 5 DIFFERENT BOXES TOGETHER; IS THAT CORRECT?

15:53:21 6 A CORRECT.

15:53:22 7 Q OKAY. AND AMONG THE DOCUMENTS THAT YOU SENT

15:53:25 8 TO CID IN MAY OF 2002 WERE SOME AMENDED TAX RETURNS

15:53:32 9 FOR YOU AND YOUR WIFE; IS THAT CORRECT?

15:53:34 10 A CORRECT.

15:53:35 11 Q AND ALSO SOME TAX RETURNS FOR CYPRESS

15:53:40 12 DEVELOPMENT CORPORATION; IS THAT CORRECT?

15:53:42 13 A CORRECT.

15:53:43 14 Q AND CYPRESS DEVELOPMENT CORPORATION WAS YOUR

15:53:48 15 BUSINESS; IS THAT CORRECT?

15:53:49 16 A IT IS THE NAME OF THE CORPORATION.

15:54:00 17 Q AND -- BUT IT WAS THE NAME OF A CORPORATION.

15:54:02 18 BUT THE ACTIVITY THAT YOU REPORTED IN THE

15:54:07 19 TAX RETURN UNDER CYPRESS CORPORATION, CYPRESS

15:54:12 20 DEVELOPMENT CORPORATION WAS YOUR BUSINESS, RIGHT?

15:54:15 21 A YES.

15:54:15 22 Q AND THAT BUSINESS WOULD BE COMMERCIAL REAL

15:54:20 23 ESTATE?

15:54:20 24 A YES.

15:54:21 25 Q OKAY. AND YOU SENT THOSE RETURNS AND OTHER

15:54:28 1 DOCUMENTS TO CID IN WASHINGTON, D.C.?

15:54:31 2 A YES.

15:54:31 3 Q OKAY. AND AMONG THOSE DOCUMENTS THAT YOU

15:54:34 4 SENT, WAS A DOCUMENT CALLED THE OMNIBUS RETURN. DO

15:54:38 5 YOU REMEMBER THAT -- IS THAT YOUR UNDERSTANDING?

15:54:40 6 A YES.

15:54:41 7 Q OKAY. AND THE OMNIBUS RETURN WAS A DOCUMENT

15:54:45 8 THAT YOU HAD SIGNED; IS THAT CORRECT?

15:54:48 9 A YES.

15:54:48 10 Q OKAY. AND THAT WAS -- AND, IN FACT, ON SOME

15:54:55 11 OF THE OTHER TAX RETURNS, YOU, INCLUDING THE

15:54:59 12 AMENDED PERSONAL RETURNS AND THE CDC CORPORATE

15:55:05 13 RETURNS, ON TOP OF IT THERE WAS THIS ENTRY SAYING

15:55:10 14 THAT SOMETHING TO THE EFFECT OF THIS IS IN

15:55:15 15 REFERENCE TO THE OMNIBUS RETURN; IS THAT CORRECT?

15:55:20 16 A YES.

15:55:21 17 Q AND YOUR INTENTION WAS TO HAVE THE OMNIBUS

15:55:25 18 RETURN IN ESSENCE EXPLAIN WHAT YOU WERE DOING?

15:55:33 19 A EXPLAIN.

15:55:35 20 Q I MEAN, TELL THE CID WHAT YOU WERE DOING?

15:55:37 21 A BASED ON THE DOCUMENT PREPARED BY THE

15:55:45 22 DEFENDANT FOR ME.

15:55:45 23 Q SURE. BUT YOU READ THE OMNIBUS RETURN BEFORE

15:55:48 24 YOU SIGNED IT, RIGHT?

15:55:50 25 A YES.

15:55:50 1 Q OKAY. AND YOU, IN FACT, YOU SIGNED IT UNDER
15:55:55 2 PENALTY OF PERJURY; IS THAT CORRECT?
15:55:57 3 A I'LL HAVE TO TAKE A LOOK AT THE DOCUMENT.
15:56:02 4 Q OKAY. SURE. LET ME SHOW YOU WHAT IS FOR
15:56:12 5 IDENTIFICATION ONLY, I'M GOING TO SHOW MR. FUNG A
15:56:15 6 DOCUMENT THAT HAS BEEN MARKED AS DEFENDANT'S
15:56:20 7 EXHIBIT A.
15:56:33 8 FIRST OF ALL, MR. FUNG, DO YOU SEE THAT
15:56:35 9 DOCUMENT?
15:56:35 10 A YES.
15:56:35 11 Q NOW, THE TITLE OF THAT DOCUMENT IS OMNIBUS
15:56:43 12 FORM 1120 TAX RETURN FOR THE YEAR 2001. THAT'S
15:56:52 13 ACTUALLY PART OF THE TITLE; IS THAT CORRECT?
15:56:54 14 A YES.
15:56:55 15 Q AND THIS RETURN WAS FILED ON BEHALF OF SAMUEL
15:57:04 16 S. FUNG AND DIANE K. BORDNER, B-O-R-D-N-E-R; IS
15:57:35 17 THAT CORRECT.
15:57:35 18 AND MR. FUNG, IF I COULD SUGGEST YOU LOOK
15:57:38 19 AT THE UPPER LEFT-HAND CORNER OF PAGE 1 OF EXHIBIT
15:57:42 20 A, PERHAPS THAT MIGHT REFRESH YOUR RECOLLECTION?
15:57:45 21 A YOU SAID?
15:57:46 22 Q THIS RETURN, THIS RETURN, OMNIBUS RETURN
15:57:50 23 EXHIBIT A WAS FILED FOR SAMUEL S. FUNG AND DIANE K
15:57:56 24 BORDNER, AMONG OTHERS?
15:57:57 25 A I DID NOT SEE DIANE BORDNER'S NAME ON IT.

15:58:06 1 Q I'M SORRY?

15:58:06 2 A I DID NOT SEE DIANE BORDNER'S NAME ON IT.

15:58:09 3 Q IF YOU LOOK IN THE UPPER LEFT CORNER OF PAGE

15:58:14 4 1?

15:58:14 5 A YES.

15:58:15 6 Q IT SAYS SAMUEL S. FUNG AND DIANE K. BORDNER.

15:58:22 7 DO YOU SEE THAT?

15:58:23 8 A NO.

15:58:23 9 Q IF I MAY. SORRY. I'M SORRY. BUT IT SAYS

15:58:48 10 SAMUEL S. FUNG PRESIDENT OF THE OREGON HOLDING

15:58:55 11 DEVELOPMENT CORPORATION; IS THAT CORRECT?

15:58:56 12 A CORRECT.

15:58:57 13 Q NOW, ON THE LAST PAGE, PAGE 46?

15:59:06 14 A YES.

15:59:06 15 Q THERE'S A VERIFICATION, RIGHT?

15:59:08 16 A YES.

15:59:09 17 MS. WONG: YOUR HONOR, ONCE AGAIN THE

15:59:10 18 GOVERNMENT WOULD OBJECT THAT THE DIRECTION TO

15:59:12 19 PARTICULAR PAGES ANTICIPATES A QUESTION AND THERE'S

15:59:15 20 NO REFRESHING OF HIS RECOLLECTION.

15:59:17 21 THE COURT: WHY DON'T YOU ASK THE

15:59:19 22 PREFATORY QUESTION.

15:59:21 23 MR. FONG: YOUR HONOR, I BELIEVE MR. FUNG

15:59:23 24 TESTIFIED THAT HE DID NOT REMEMBER IF HE HAD SIGNED

15:59:25 25 THIS VERIFICATION UNDER PENALTY OF PERJURY, BUT

15:59:31 1 I 'LL BE GLAD TO DO IT AGAIN.

15:59:33 2 Q MR. FUNG?

15:59:34 3 A YES.

15:59:34 4 Q WITHOUT LOOKING AT THE DOCUMENT, DO YOU RECALL

15:59:36 5 IF YOU SIGNED THIS DOCUMENT UNDER THE PENALTY OF

15:59:39 6 PERJURY?

15:59:39 7 A YES, I 'VE SEEN THAT.

15:59:41 8 Q AND SO YOU DID?

15:59:42 9 A YES.

15:59:42 10 Q I WANT TO DIRECT YOUR ATTENTION TO PAGE 40 OF

16:00:04 11 THE EXHIBIT A.

16:00:05 12 THE COURT: YOU HAD A QUESTION ABOUT

16:00:06 13 THIS?

16:00:07 14 MR. FONG: I JUST WANT TO DIRECT HIS

16:00:09 15 ATTENTION.

16:00:09 16 THE COURT: WHY DON'T YOU ASK THE

16:00:11 17 QUESTION FIRST. YOU MAY NOT NEED TO DIRECT HIS

16:00:13 18 ATTENTION BASED ON THE QUESTION.

16:00:14 19 BY MR. FONG:

16:00:15 20 Q MR. FUNG?

16:00:16 21 A YES.

16:00:16 22 Q NOW, DO YOU RECALL IN THIS DOCUMENT STATING

16:00:21 23 THAT YOU, AS PRESIDENT AND AS A TAXPAYER, THAT YOU

16:00:27 24 WERE REPUDIATING THE THEORY AND PRACTICE OF

16:00:31 25 NATIONAL TRUST SERVICES?

16:00:32 1 YOU SAID THAT IN THIS DOCUMENT?

16:00:34 2 A YES. YES.

16:00:36 3 Q AND THAT, THAT'S NOT BECAUSE -- AND YOU SAID

16:00:41 4 THAT YOU WERE REPUDIATING THE THEORY AND PRACTICE

16:00:44 5 OF NATIONAL TRUST SERVICES NOT BECAUSE OF

16:00:48 6 NONCOMPLIANCE WITH THE INTERNAL REVENUE CODE, BUT

16:00:51 7 MERELY THE PERCEIVED NONCOMPLIANCE BY THE INTERNAL

16:00:54 8 REVENUE SERVICE.

16:00:55 9 IS THAT CORRECT?

16:00:56 10 A YES.

16:00:56 11 Q OKAY. AND YOU ALSO SAID IN THIS DOCUMENT THAT

16:01:05 12 YOU ARE DOING YOUR BEST TO CONVERT NATIONAL TRUST

16:01:08 13 SERVICE CLIENTS AND TRUST OVER THE CORPORATE TAX

16:01:12 14 FILINGS AND OTHERWISE CONVENTIONAL PAYMENT OF ALL

16:01:16 15 DUE TAXES AS REASONABLY PERCEIVED BY THE INTERNAL

16:01:20 16 REVENUE SERVICE.

16:01:22 17 IS THAT CORRECT?

16:01:22 18 A IT IS.

16:01:23 19 Q OKAY. SO WHAT YOU WERE TRYING TO DO THERE IS

16:01:27 20 TO TELL THE I.R.S., LOOK, REGARDLESS OF WHETHER I

16:01:30 21 AGREE OR DISAGREE WITH YOU, I'M COMMITTED TO CHANGE

16:01:34 22 MY WAYS, I'M NOT GOING TO FILE OR PREPARE N.T.S.

16:01:40 23 TAX RETURNS ANYMORE AND I'M GOING TO CONVERT THE

16:01:44 24 N.T.S. TRUSTS INTO CORPORATIONS AND PAY THE

16:01:49 25 CONVENTIONAL TAXES THAT ARE OWING.

16:01:53 1 IS THAT WHAT YOU WERE TRYING TO DO?

16:01:54 2 A YEAH, BUT WITH THE ASSISTANCE OF THE

16:02:01 3 DEFENDANTS.

16:02:01 4 Q SURE. NOW, MR. LIGHTER ADVISED YOU TO DO

16:02:04 5 THAT; RIGHT?

16:02:04 6 A CORRECT.

16:02:05 7 Q AND -- BUT YOU DID IT AND YOU SIGNED AND

16:02:11 8 STATED UNDER PENALTY OF PERJURY THAT YOU WERE

16:02:14 9 WILLING TO DO THAT, RIGHT?

16:02:16 10 A YES.

16:02:16 11 Q AND BY THE WAY, BEFORE YOU MET MR. LIGHTER,

16:02:18 12 YOU HAD NEVER TOLD ANYBODY THAT YOU WERE

16:02:24 13 REPUDIATING NATIONAL TRUST SERVICES IN ANY WAY; IS

16:02:28 14 THAT TRUE?

16:02:28 15 A YES.

16:02:28 16 Q AND YOU NEVER TOLD ANYBODY THAT YOU THOUGHT

16:02:37 17 NATIONAL TRUST SERVICES WAS ILLEGAL.

16:02:41 18 IS THAT TRUE?

16:02:42 19 A NO, I NEVER TOLD ANYBODY.

16:02:44 20 Q OKAY. AND IT WAS AFTER YOU MET MR. LIGHTER

16:02:48 21 THAT YOU MADE THIS STATEMENT THAT YOU WERE

16:02:51 22 REPUDIATING NATIONAL TRUST SERVICES AND WHAT THE

16:02:56 23 TRUST SERVICES RETURNS WERE DOING?

16:02:57 24 A YES.

16:02:58 25 Q OKAY. AND THAT REGARDLESS OF YOUR PERSONAL

16:03:03 1 FEELINGS, YOU WERE WILLING TO PLAY BY THE I.R.S.

16:03:13 2 RULES FROM NOW ON?

16:03:14 3 A RIGHT.

16:03:14 4 Q AND ALONG WITH THAT YOU SAID IN THESE

16:03:28 5 STATEMENTS THAT YOU WERE CONFESSING TO THE

16:03:30 6 DEFENDANTS?

16:03:30 7 A YES, BASED ON THE ASSISTANCE OF THE DEFENDANT.

16:03:35 8 Q SURE. I JUST WANT TO GET A CLARIFICATION.

16:03:38 9 BUT THE FELONIES THAT YOU WERE CONFESSING

16:03:40 10 TO THE I.R.S. IN THIS DOCUMENT WAS WHAT YOU HAD

16:03:42 11 BEEN DOING PREVIOUSLY BY PREPARING THESE FALSE

16:03:47 12 N.T.S. TRUST TAX RETURNS; IS THAT CORRECT?

16:03:50 13 A YES.

16:03:50 14 Q OKAY. SO IT WAS AFTER YOU MET MR. LIGHTER

16:03:55 15 THAT YOU MADE THIS CONFESSION THAT YOU NOW KNOW

16:04:03 16 WHAT YOU HAD DONE BEFORE WAS ILLEGAL AND, IN FACT,

16:04:07 17 FELONIES?

16:04:18 18 THE COURT: DO YOU UNDERSTAND THE

16:04:19 19 QUESTION?

16:04:19 20 THE WITNESS: NO, I DON'T UNDERSTAND THE

16:04:20 21 QUESTION.

16:04:20 22 THE COURT: ASK THE QUESTION AGAIN.

16:04:22 23 BY MR. FONG:

16:04:23 24 Q YOU JUST TESTIFIED EARLIER, I BELIEVE, THAT

16:04:25 25 YOU WERE CONFESSING TO FELONIES IN THE PREPARATION

16:04:28 1 OF THE FALSE N.T.S. TAX RETURNS; IS THAT CORRECT?

16:04:34 2 A YES.

16:04:34 3 Q AND YOU MADE THAT CONFESSION AFTER YOU MET

16:04:37 4 MR. LIGHTER?

16:04:37 5 A YES.

16:04:37 6 Q AND IT WAS BECAUSE MR. LIGHTER ADVISED THAT

16:04:40 7 YOU WERE DOING THIS?

16:04:40 8 A YES.

16:04:41 9 Q CERTAINLY BEFORE YOU MET MR. LIGHTER YOU HAD

16:04:49 10 NEVER SAID TO ANYBODY, MUCH LESS THE I.R.S., THAT

16:04:53 11 WHAT I HAD BEEN DOING WITH THE N.T.S. RETURNS WAS A

16:04:56 12 FELONY AND I'M CONFESSING TO IT?

16:04:58 13 A CORRECT.

16:04:58 14 Q BY THE WAY, MR. FUNG, A LITTLE BIT LATER, IT

16:05:27 15 WOULD HAVE BEEN FILED IN 2002, A LITTLE BIT LATER

16:05:31 16 THAT YOU FILED THIS OMNIBUS RETURN THAT WE HAVE

16:05:36 17 BEEN TALKING ABOUT, RIGHT?

16:05:38 18 A YES.

16:05:38 19 Q AND LATER ON YOU FILED A SUPPLEMENT TO THAT?

16:05:40 20 A YES.

16:05:40 21 Q AND I BELIEVE IT WAS EXHIBIT 42 THAT YOU

16:05:43 22 TESTIFIED TO YESTERDAY; RIGHT?

16:05:44 23 A YES.

16:05:45 24 Q AND IN THAT SUPPLEMENT, WHICH HAS BEEN

16:05:53 25 ADMITTED INTO EVIDENCE, YOU STRONGLY REPEATED WHAT

16:06:05 1 YOU SAID IN THE OMNIBUS RETURN THAT WE HAVE JUST
 16:06:07 2 BEEN TALKING ABOUT, RIGHT?
 16:06:08 3 A YES.
 16:06:08 4 Q AND YOU SAID THAT YOU'RE AGAIN CONFESSING TO
 16:06:12 5 CONSPIRACY TO COMMIT THESE ACTS COMPLAINED OF IN
 16:06:14 6 THIS PARTICULAR RETURN, WHICH WOULD HAVE BEEN THE
 16:06:17 7 PREPARATION OF THE N.T.S. TRUST RETURNS, RIGHT?
 16:06:20 8 A YES.
 16:06:27 9 Q AND YOU, AGAIN, EMPHASIZED THAT YOU WERE
 16:06:29 10 FURTHER REPUDIATING THE PRACTICES OF N.T.S., MORE
 16:06:34 11 SPECIFICALLY ALL OF THE TEACHING AND LEARNING AND
 16:06:36 12 HOW TO PREPARE COMPLEX TRUST REPORTING FORM 1041'S;
 16:06:40 13 IS THAT CORRECT?
 16:06:40 14 A YES.
 16:06:40 15 Q AS TAUGHT TO YOU BY THE HEAD OF THE N.T.S.
 16:06:48 16 MR. ROY FRITTS AND RICK PRESCOTT, RIGHT?
 16:06:53 17 A YES.
 16:06:54 18 Q AND BASICALLY YOU WERE SAYING VERY, VERY
 16:06:56 19 STRONGLY IN THE SUPPLEMENT THAT YOU WANTED TO
 16:06:58 20 SUPPORT WHAT YOU HAD SAID EARLIER IN THE OMNIBUS
 16:07:01 21 RETURN THAT YOU HAD FILED IN MAY, A COUPLE MONTHS
 16:07:04 22 LATER YOU WANTED TO SEND A STRONGER REPEATED
 16:07:07 23 MESSAGE TO THE I.R.S. THAT YOU WERE TOTALLY
 16:07:09 24 REPUDIATING N.T.S.?
 16:07:13 25 A YES.

16:07:13 1 Q AND THAT WAS BECAUSE YOU HAD MET MR. LIGHTER?

16:07:21 2 A CORRECT.

16:07:35 3 Q NOW, ALONG WITH THE OMNIBUS RETURN, YOU

16:07:37 4 TESTIFIED EARLIER THAT THOSE THREE BOXES THAT YOU

16:07:40 5 SENT TO CID IN MAY OF 2002, YOU HAD SENT SOME

16:07:44 6 AMENDED PERSONAL RETURNS FOR YOU AND YOUR WIFE; IS

16:07:44 7 THAT CORRECT?

16:07:49 8 A THAT'S CORRECT.

16:07:49 9 Q AND BY THE WAY, YOUR WIFE'S NAME IS DIANE K.

16:07:53 10 BORDNER; CORRECT?

16:07:54 11 A CORRECT.

16:07:55 12 Q AND YOU ALSO, IN ADDITION TO AMENDING THE

16:08:00 13 RETURNS FOR PERSONAL RETURNS, YOU ALSO FILED THREE

16:08:10 14 TAX RETURNS FOR CYPRESS DEVELOPMENT CORPORATION; IS

16:08:13 15 THAT CORRECT?

16:08:13 16 A YES.

16:08:15 17 Q FOR THE YEARS 1999 -- EXCUSE ME. FOR THE

16:08:17 18 YEARS 1998, 1999, AND THE YEAR 2000; IS THAT

16:08:22 19 CORRECT?

16:08:22 20 A YES.

16:08:22 21 Q OKAY. NOW, THIS WAS SENT AFTER YOU MET

16:08:38 22 MR. LIGHTER?

16:08:38 23 A CORRECT.

16:08:38 24 Q AND, NOW, BEFORE YOU MET MR. LIGHTER, A COUPLE

16:08:44 25 YEARS BEFORE, YOU AND YOUR WIFE HAD FILED PERSONAL

16:08:46 1 TAX RETURNS; CORRECT?

16:08:47 2 A CORRECT.

16:08:47 3 Q AND YOU FILED THEM FOR 1999, 1998, AND 2000;

16:08:52 4 IS THAT RIGHT?

16:08:53 5 A YES.

16:08:53 6 Q NOW, LET'S TAKE 1998, BEFORE YOU MET

16:08:59 7 MR. LIGHTER FOR THE TAXES FOR 1998, THE PERSONAL

16:09:03 8 TAXES THAT YOU AND YOUR WIFE FILED. NOW, WAS THAT

16:09:10 9 THE ONLY RETURN THAT YOU AND YOUR WIFE FILED FOR

16:09:15 10 THE YEAR 1998?

16:09:16 11 A YES, BASED ON MY MEMORY.

16:09:24 12 Q SO OTHER THAN THAT ONE PERSONAL RETURN, THE

16:09:27 13 1040, FOR 1998 FOR YOU AND YOUR WIFE, YOU DO NOT

16:09:31 14 RECALL FILING ANY OTHER RETURN, RIGHT, FOR THAT

16:09:33 15 YEAR BEFORE YOU MET MR. LIGHTER?

16:09:38 16 A YES.

16:09:41 17 Q SO WHAT YOU REPORTED FOR 1998 BEFORE YOU MET

16:09:43 18 MR. LIGHTER WAS WHATEVER WAS IN THAT 1998 PERSONAL

16:09:49 19 TAX RETURN; RIGHT?

16:09:50 20 A YES.

16:09:51 21 Q I'M GOING TO SHOW YOU A DOCUMENT THAT HAS

16:10:28 22 ALREADY BEEN ADMITTED INTO EVIDENCE, GOVERNMENT'S

16:10:36 23 EXHIBIT 76.

16:10:42 24 I'M GOING TO SHOW ON THE SCREEN, PUBLISH

16:10:44 25 ON THE SCREEN PAGE 1 OF EXHIBIT 76.

16:10:48 1 FIRST OF ALL, DO YOU SEE THAT DOCUMENT ON
16:10:50 2 THE SCREEN IN FRONT OF YOU, MR. FUNG?
16:10:52 3 A YES.
16:10:52 4 Q AND THIS WAS THE 1998 INDIVIDUAL INCOME TAX
16:10:58 5 RETURN THAT YOU FILED FOR YOU AND YOUR WIFE
16:11:00 6 JOINTLY; RIGHT?
16:11:01 7 A CORRECT.
16:11:01 8 Q OKAY. AND ON LINE 7 IT REPORTS WAGES OF
16:11:09 9 \$36,787. DO YOU SEE THAT?
16:11:12 10 A YES.
16:11:12 11 Q AND THAT WAS YOUR WIFE'S INCOME FROM HER JOB,
16:11:18 12 RIGHT?
16:11:19 13 A CORRECT.
16:11:19 14 Q AND SO ON THIS RETURN YOU DID NOT REPORT ANY
16:11:27 15 OF YOUR EARNINGS OR INCOME OR REVENUES FROM ANY
16:11:29 16 BUSINESS THAT YOU WERE DOING, RIGHT, FOR 1998?
16:11:32 17 A I DID REPORT --
16:11:42 18 Q I'M SORRY?
16:11:43 19 A I DID REPORT MY EARNINGS, WHICH IS THE TRUSTEE
16:11:46 20 FEES.
16:11:46 21 Q OKAY. IT SAYS?
16:11:49 22 A IN 1991 -- IT'S BASED ON NATIONAL TRUST
16:11:54 23 SERVICES TEACHINGS.
16:11:55 24 Q AND THAT SHOWS \$300; RIGHT?
16:11:57 25 A YES.

16:11:57 1 Q AND -- BUT YOU DID NOT REPORT ANY OTHER INCOME
 16:11:59 2 THAT YOU HAD EARNED FOR 1998; IS THAT CORRECT?
 16:12:02 3 A BASED ON NATIONAL TRUST SERVICES TEACHING THE
 16:12:09 4 REVENUE WE REPORT ON THE TRUST, NOT ON PERSONAL
 16:12:12 5 RETURNS.
 16:12:12 6 Q THAT'S FINE. BUT YOU DID NOT -- BUT ALL I'M
 16:12:15 7 ASKING YOU IS THAT ON THIS RETURN, YOU DID NOT
 16:12:17 8 REPORT ANY OTHER INCOME FOR YOUR EARNINGS OR WHAT
 16:12:23 9 YOU EARNED THROUGH YOUR BUSINESS ACTIVITIES IN
 16:12:30 10 1998? IS THAT CORRECT?
 16:12:31 11 A THE COMPANY MADE THE EARNINGS.
 16:12:33 12 Q I UNDERSTAND. SO YOUR UNDERSTANDING IS THAT
 16:12:36 13 YOU DID NOT ON THIS PARTICULAR TAX RETURN?
 16:12:41 14 A NO.
 16:12:42 15 Q THAT'S CORRECT, RIGHT?
 16:12:43 16 A I'M NOT IN SOLE PRACTICE SO IT'S NOT ON
 16:12:48 17 SCHEDULE C.
 16:12:50 18 Q I UNDERSTAND. BUT ALL I'M ASKING YOU IS THAT
 16:12:52 19 THIS RETURN, EXHIBIT 76, DOES NOT HAVE ANY
 16:12:55 20 REPORTING OF ANY INCOME FROM ANY OF YOUR BUSINESS
 16:12:57 21 ACTIVITIES OTHER THAN THE \$300 OF TRUSTEE FEES THAT
 16:13:02 22 YOU EARNED; IS THAT CORRECT?
 16:13:04 23 A CORRECT.
 16:13:04 24 Q BUT THERE WERE -- BUT YOUR BUSINESS ACTIVITY
 16:13:08 25 FEES FOR THAT YEAR, REGARDLESS OF HOW THEY ARE

16:13:11 1 CATEGORIZED, YOUR BUSINESS ACTIVITIES DID GENERATE
16:13:15 2 INCOME AND EARNINGS?
16:13:20 3 A THAT'S CORRECT.
16:13:20 4 Q AND THOSE INCOME AND EARNINGS WERE NOT
16:13:22 5 REPORTED TO THE I.R.S. IN ANY FORM IN THE YEAR
16:13:24 6 BEFORE -- EVER BEFORE YOU MET MR. LIGHTER; IS THAT
16:13:29 7 CORRECT?
16:13:29 8 A YES.
16:13:29 9 Q NOW, I'D LIKE YOU TO TAKE A LOOK AT
16:13:47 10 EXHIBIT 80, WHICH HAS BEEN ADMITTED INTO EVIDENCE.
16:13:54 11 I'LL PUBLISH THAT, THE FIRST PAGE OF
16:13:56 12 EXHIBIT 80.
16:13:57 13 AND, FIRST OF ALL, MR. FUNG, DO YOU SEE
16:13:59 14 THAT PAGE 1 OF EXHIBIT 80 IN FRONT OF YOU?
16:14:01 15 A YES.
16:14:01 16 Q AND THIS IS THE 1998, 1120 U.S. CORPORATION
16:14:08 17 INCOME TAX RETURN FOR CYPRESS DEVELOPMENT
16:14:10 18 CORPORATION; IS THAT CORRECT?
16:14:11 19 A CORRECT.
16:14:12 20 Q OKAY. ON LINE 1C IT SHOWS GROSS RECEIPT OF
16:14:24 21 SALES OF \$94,168; IS THAT CORRECT?
16:14:28 22 A CORRECT.
16:14:28 23 Q OKAY. NOW, THIS 98 -- THIS NUMBER, \$94,168,
16:14:36 24 THAT'S THE REVENUES OR EARNINGS THAT YOU GENERATED
16:14:42 25 THROUGH YOUR BUSINESS ACTIVITIES FOR THE CALENDAR

16:14:44 1 YEAR OR THE TAX YEAR OF 1998; RIGHT?

16:14:47 2 A CORRECT.

16:14:47 3 Q AND THAT HAD NEVER BEEN REPORTED BEFORE YOU

16:14:56 4 SUBMITTED OR FILED EXHIBIT 80; IS THAT CORRECT?

16:14:58 5 A CORRECT.

16:14:59 6 Q AND EXHIBIT 80 HAD COME -- HAD BEEN PREPARED

16:15:03 7 WITH MR. LIGHTER'S HELP?

16:15:05 8 A CORRECT.

16:15:05 9 Q SO IT WAS ONLY AFTER YOU MET MR. LIGHTER, THAT

16:15:09 10 THE U.S. GOVERNMENT RECEIVED A REPORTING OF

16:15:12 11 \$94,168?

16:15:16 12 A YES.

16:15:16 13 Q NOW, THE EXHIBIT 80, THE RETURN FOR THE 1998

16:15:28 14 RETURN FOR THE CYPRESS DEVELOPMENT CORPORATION NOW,

16:15:34 15 YOU TOOK CERTAIN BUSINESS DEDUCTIONS ON THAT

16:15:37 16 RETURN; IS THAT CORRECT?

16:15:37 17 A CORRECT.

16:15:38 18 Q NOW, BUT THESE WERE BUSINESS EXPENSES THAT

16:15:44 19 WERE IN YOUR MIND LEGITIMATE BUSINESS EXPENSES;

16:15:47 20 RIGHT?

16:15:47 21 A CORRECT.

16:15:47 22 Q REGARDLESS OF WHETHER YOU HAD THE ACTUAL

16:15:50 23 RECEIPT OR NOT, THESE WERE THINGS FOR LIKE

16:15:53 24 PHOTOCOPYING?

16:15:54 25 A CORRECT.

16:15:54 1 Q AND I BELIEVE THAT YOUR BUSINESS HAD TO PAY
16:15:58 2 OUT COMMISSION TO OTHER AGENTS; IS THAT CORRECT?
16:16:01 3 A THAT'S CORRECT.
16:16:02 4 Q AND THAT WAS LIKE \$8,000 OR \$10,000; RIGHT?
16:16:05 5 SO \$8,000 OR \$10,000 FOR THE YEAR, RIGHT?
16:16:09 6 A IT CAN ANY TYPE OF AMOUNT.
16:16:11 7 Q I'M SORRY?
16:16:12 8 A IT CAN BE ANY TYPE, YOU KNOW, THE CORRECT
16:16:18 9 AMOUNT.
16:16:18 10 Q BUT YOU DID PAY OUT -- AND THAT WAS FOR YOUR
16:16:25 11 REAL ESTATE BUSINESS, RIGHT?
16:16:26 12 A YES.
16:16:26 13 Q BUT THAT REAL ESTATE BUSINESS DID PAY OUT
16:16:29 14 COMMISSION TO OTHER AGENTS?
16:16:30 15 A AT THAT TIME I'M NOT SURE I HAVE ANY AGENTS.
16:16:39 16 I MAY HAVE ONLY ONE OR TWO.
16:16:55 17 Q LET ME PUBLISH PAGE 8 OF EXHIBIT 80.
16:16:59 18 FIRST OF ALL, MR. FUNG, DO YOU SEE THAT
16:17:04 19 ONE-PAGE DOCUMENT?
16:17:05 20 A YES.
16:17:05 21 Q AND THIS IS THE LINE 26 FOR THE FORM 1120;
16:17:09 22 RIGHT?
16:17:10 23 A THAT'S CORRECT.
16:17:10 24 Q AND WHAT IT IS IS A LIST, IT'S AN ITEMIZATION
16:17:16 25 OF THE SPECIFIC ITEMS OF BUSINESS EXPENSES, RIGHT?

16:17:20 1 A CORRECT.

16:17:21 2 Q THAT YOU WERE TRYING TO TAKE AS A DEDUCTION?

16:17:23 3 A CORRECT.

16:17:23 4 Q NOW, DIRECTING YOUR ATTENTION TO LINE 37.

16:17:30 5 DO YOU SEE THAT LINE, FIRST OF ALL, ON

16:17:32 6 THE SCREEN?

16:17:33 7 A YES.

16:17:33 8 Q AND IF I MOVE THAT OVER, DO YOU SEE THE

16:17:35 9 CORRESPONDING NUMBER ENTRY ON THE RIGHT OF 8,793?

16:17:42 10 A CORRECT.

16:17:42 11 Q OKAY. SO DOES THAT REFRESH YOUR RECOLLECTION

16:17:47 12 AS TO WHETHER OR NOT YOUR BUSINESS, YOUR REAL

16:17:49 13 ESTATE BUSINESS FOR 1998 HAD PAID OUT COMMISSIONS

16:17:52 14 TO OTHER PEOPLE?

16:17:53 15 A AND FEES AND WHATNOT, YES.

16:17:55 16 Q OKAY. AND SO THAT WAS ABOUT \$8,700; CORRECT?

16:18:01 17 A CORRECT.

16:18:01 18 Q AND YOU TOOK THAT AS A DEDUCTION?

16:18:03 19 A CORRECT.

16:18:03 20 Q OKAY. AND ON THE TAX FORM, THAT IS

16:18:10 21 EXHIBIT 80?

16:18:10 22 A CORRECT.

16:18:11 23 Q AND ALL OF THE ITEMS LISTED ON PAGE 80.8,

16:18:17 24 Q EXCUSE ME, ON PAGE 8 OF EXHIBIT 80, ALL OF THOSE

16:18:20 25 Q ITEMS ARE WHAT YOU CONSIDER TO BE LEGITIMATE

16:18:27 1 BUSINESS EXPENSES, RIGHT?

16:18:28 2 THESE WERE NOT THE N.T.S. TYPE OF

16:18:36 3 DEDUCTIONS, WERE THEY?

16:18:37 4 A NO.

16:18:37 5 Q SO, FOR EXAMPLE, THERE WAS NO LUXURY VACATION

16:18:40 6 DEDUCTION?

16:18:40 7 A NO.

16:18:40 8 Q AND THERE WAS NO DEDUCTION FOR YOUR RIDING

16:18:43 9 HORSE?

16:18:44 10 A NO.

16:18:47 11 Q THERE WAS NO DEDUCTION FOR A CHILD'S COLLEGE

16:18:54 12 TUITION IN A PRIVATE UNIVERSITY?

16:19:00 13 A NO, BUT --

16:19:01 14 Q BUT YOU HAD SEEN THESE TYPES OF DEDUCTIONS

16:19:04 15 THAT I HAD JUST MENTIONED IN THE N.T.S. TRUST

16:19:06 16 RETURNS; RIGHT?

16:19:08 17 A CAN YOU REPEAT THE QUESTION?

16:19:11 18 Q SURE. IN THE NATIONAL TRUST SERVICES RETURNS

16:19:13 19 THAT YOU HAD PREPARED --

16:19:14 20 A YES.

16:19:14 21 Q -- YOU SAW A LOT OF PERSONAL EXPENSES BEING

16:19:17 22 DEDUCTED, RIGHT?

16:19:18 23 A YES.

16:19:18 24 Q AND -- OKAY. AND THAT WOULD INCLUDE THINGS

16:19:20 25 LIKE YOUR CLIENT, THE TAXPAYER, THE CLIENT'S

16:19:25 1 CHILDREN'S COLLEGE TUITION?

16:19:27 2 A RIGHT.

16:19:28 3 Q OKAY. PRIVATE COLLEGE TUITION?

16:19:31 4 A RIGHT.

16:19:31 5 Q THAT COULD BE A LOT?

16:19:33 6 A RIGHT.

16:19:33 7 Q AND SOME CLIENTS DEDUCTED THE COSTS OF

16:19:38 8 BOARDING THEIR HORSE, RIGHT?

16:19:40 9 A YES, BUT THEY WERE DEDUCTED ON THE FAMILY

16:19:45 10 TRUST. THIS IS A BUSINESS.

16:19:46 11 Q OKAY. BUT THERE'S NOTHING -- WHAT I'M ASKING

16:19:49 12 YOU, THOUGH, IS THAT THERE IS NOTHING IN

16:19:55 13 EXHIBIT 80, THAT ANY OF THE DEDUCTIONS, THERE'S NO

16:19:58 14 DEDUCTIONS ON EXHIBIT 80, THAT IS THE N.T.S. TYPE

16:20:01 15 OF PERSONAL LIVING EXPENSES DEDUCTION?

16:20:04 16 A CORRECT.

16:20:04 17 Q OKAY. AND DIRECTING YOUR ATTENTION -- EXCUSE

16:20:19 18 ME. AND YOU FILED A PERSONAL TAX -- YOU AND YOUR

16:20:22 19 WIFE HAD FILED A PERSONAL TAX RETURN FOR 1999,

16:20:26 20 RIGHT?

16:20:26 21 A YES.

16:20:26 22 Q OKAY. AND THAT PREVIOUSLY HAD BEEN ADMITTED

16:20:29 23 INTO EVIDENCE AS EXHIBIT 77.

16:20:38 24 I'M GOING TO PUBLISH THE FIRST PAGE OF

16:20:41 25 EXHIBIT 77.

16:20:42 1 FIRST OF ALL, MR. FUNG, DO YOU SEE THAT
16:20:44 2 PAGE ON THE SCREEN?
16:20:46 3 A YES.
16:20:46 4 Q OKAY. AND SO THAT'S THE 1999 1040 U.S.
16:20:50 5 INDIVIDUAL INCOME TAX RETURN FOR DIANE BORDNER AND
16:20:56 6 SAMUEL FUNG?
16:20:57 7 A YES.
16:20:57 8 Q OKAY. SO THAT'S YOU AND YOUR WIFE?
16:21:00 9 A YES.
16:21:00 10 Q OKAY. NOW, DIRECTING YOUR ATTENTION TO LINE 7
16:21:05 11 OF THE FIRST PAGE OF EXHIBIT 77.
16:21:09 12 THERE IS AN ENTRY OF ZERO, RIGHT?
16:21:11 13 A CORRECT.
16:21:12 14 Q AND THEN ON LINE 12 THERE IS A BUSINESS INCOME
16:21:22 15 ENTRY OF 10,260, RIGHT?
16:21:25 16 A CORRECT.
16:21:25 17 Q AND THAT WAS THE TOTAL INCOME THAT WAS
16:21:30 18 REPORTED FOR YOU AND YOUR WIFE FOR 1999; IS THAT
16:21:35 19 CORRECT?
16:21:35 20 A CORRECT.
16:21:36 21 Q OKAY. AND YOU, YOU OR YOUR WIFE DID NOT FILE
16:21:41 22 ANY OTHER TAX RETURN REPORTING ANY OTHER EARNINGS
16:21:46 23 OR INCOME FROM ANY BUSINESS ACTIVITIES THAT YOU OR
16:21:50 24 YOUR WIFE HAD DONE FOR -- OR HAD ENGAGED IN, IN
16:21:54 25 1999; IS THAT CORRECT?

16:21:55 1 A YES.

16:21:55 2 Q BUT THERE WERE EARNINGS THAT YOU OR YOUR WIFE

16:22:00 3 GENERATED FROM BUSINESS FOR 1999, RIGHT?

16:22:04 4 A YES.

16:22:04 5 Q OKAY. BUT THAT WAS NEVER -- BUT UNTIL YOU MET

16:22:08 6 MR. LIGHTER, THAT -- THOSE EARNINGS HAD NEVER BEEN

16:22:13 7 REPORTED TO THE I.R.S.?

16:22:14 8 A NO.

16:22:14 9 Q OKAY. NOW, AFTER YOU MET MR. LIGHTER, YOU

16:22:22 10 FILED FOR 1999 A TAX RETURN FOR CYPRESS DEVELOPMENT

16:22:31 11 CORPORATION FOR THE YEAR 1999; IS THAT CORRECT?

16:22:35 12 A YES.

16:22:36 13 Q AND PREVIOUSLY WE SAW THAT. THAT WAS

16:22:44 14 EXHIBIT 82 THAT HAD BEEN ADMITTED INTO EVIDENCE.

16:22:47 15 I'M GOING TO PUBLISH THE FIRST PAGE OF

16:22:49 16 THAT.

16:22:52 17 AND, FIRST OF ALL, MR. FUNG, DO YOU SEE

16:22:56 18 EXHIBIT -- THE FIRST PAGE OF EXHIBIT 82?

16:22:58 19 A YES.

16:22:59 20 Q AND THAT IS THE -- YEAH, 1999 U.S. CORPORATION

16:23:11 21 INCOME TAX RETURN 1120, FORM 1120 FOR CYPRESS

16:23:15 22 DEVELOPMENT CORPORATION?

16:23:16 23 A YES.

16:23:16 24 Q OKAY. AND THEN ON LINE 1C THERE'S AN ENTRY OF

16:23:21 25 \$112,327; IS THAT CORRECT?

16:23:26 1 A YES.

16:23:27 2 Q NOW, THAT REVENUES -- BUT THAT REPRESENTS

16:23:35 3 REVENUES OR EARNINGS THAT YOU GENERATED THROUGH

16:23:37 4 YOUR BUSINESS; IS THAT CORRECT?

16:23:38 5 A YES.

16:23:39 6 Q FOR THE YEAR 1999?

16:23:40 7 A YES.

16:23:41 8 Q AND BEFORE YOU FILED THIS TAX RETURN, IN

16:23:50 9 AROUND MAY OF 2002, THAT -- THOSE EARNINGS, THE

16:23:56 10 \$112,000 HAD NEVER BEEN REPORTED TO THE U.S.

16:24:01 11 GOVERNMENT OR THE I.R.S.?

16:24:02 12 A NO, NOT AT THAT TIME.

16:24:04 13 Q AND IT WAS ONLY AFTER YOU MET MR. LIGHTER THAT

16:24:06 14 THE \$112,327 OF GROSS REVENUES HAD BEEN REPORTED --

16:24:16 15 WERE REPORTED TO THE I.R.S.?

16:24:17 16 A CORRECT.

16:24:17 17 Q OKAY. NOW, YOU ALSO ON THIS RETURN, YOU ALSO

16:24:20 18 TOOK BUSINESS REDUCTIONS, BUSINESS EXPENSE

16:24:24 19 DEDUCTIONS, RIGHT?

16:24:25 20 A YES.

16:24:25 21 Q AND, AGAIN, IN YOUR MIND, THOSE WERE ALL WHAT

16:24:31 22 YOU CONSIDERED TO BE LEGITIMATE BUSINESS EXPENSES

16:24:33 23 RELATING TO YOUR BUSINESS PRACTICE, RIGHT?

16:24:38 24 A CORRECT.

16:24:39 25 Q AND THEY WERE NOT FOR PERSONAL LIVING

16:24:41 1 EXPENSES?

16:24:42 2 A NO.

16:24:42 3 Q AND THEY WERE NOT THE NATIONAL TRUST SERVICES

16:24:44 4 TYPE OF PERSONAL LIVING EXPENSES DEDUCTIONS, RIGHT?

16:24:46 5 A NO.

16:24:52 6 THE COURT: SHOULD WE TAKE OUR EVENING

16:24:54 7 RECESS NOW?

16:24:54 8 MR. FONG: SURE.

16:24:55 9 THE COURT: AND YOU WERE ABOUT TO MOVE TO

16:24:56 10 ANOTHER TOPIC NOW?

16:24:58 11 MR. FONG: YES.

16:24:58 12 THE COURT: ALL RIGHT. LET'S DO THAT.

16:25:00 13 LET'S TAKE OUR WEEKEND RECESS AT THIS TIME, LADIES

16:25:02 14 AND GENTLEMEN. THANK YOU FOR YOUR PATIENCE.

16:25:03 15 AGAIN, I APOLOGIZE FOR THE DELAY.

16:25:05 16 WE'LL SEE YOU WILL BACK HERE ON MONDAY AT

16:25:09 17 9:00 O'CLOCK. PLEASE COLLECT YOURSELVES SO WE CAN

16:25:12 18 CALL YOU OUT AT 9:00 O'CLOCK.

16:25:14 19 DO HAVE A GOOD WEEKEND. I'LL REMIND YOU

16:25:17 20 OF THE ADMONITION THAT WE HAVE IN PLACE AND YOU CAN

16:25:21 21 LEAVE YOUR NOTEBOOKS ON YOUR SEAT.

16:25:26 22 SIR, YOU CAN STAND DOWN.

16:26:05 23 (WHEREUPON, THE PROCEEDINGS IN THIS

16:26:06 24 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

16:26:06 25 THE COURT: I JUST WANT TO TALK A LITTLE

16:26:07 1 BIT ABOUT OUR SCHEDULE.

16:26:08 2 MR. FUNG, IF I COULD ASK YOU TO STAND

16:26:12 3 OUTSIDE IF YOU WOULD, SIR.

16:26:13 4 PLEASE BE SEATED. THANKS.

16:26:20 5 I JUST WANT TO TOUCH BASE A LITTLE BIT

16:26:22 6 ABOUT OUR SCHEDULING AND HOW WE'RE DOING TIMING

16:26:24 7 WISE.

16:26:25 8 FROM THE GOVERNMENT'S PERSPECTIVE, ARE WE

16:26:32 9 ON YOUR SCHEDULE AS FAR AS YOUR WITNESSES?

16:26:34 10 MR. O'REILLY: A LITTLE BIT BEHIND BUT

16:26:36 11 NOT SIGNIFICANTLY.

16:26:36 12 ONE OF THE THINGS THAT WAS -- I WILL

16:26:40 13 STAND UP. I'M NOT COMFORTABLE DOING THAT, YOUR

16:26:43 14 HONOR. I'M SORRY.

16:26:44 15 BUT I WILL CONFER WITH MR. FONG AFTER

16:26:49 16 COURT TODAY TO DETERMINE HOW MUCH LONGER HE THINKS

16:26:51 17 HE HAS WITH RESPECT TO MR. FUNG ON CROSS.

16:26:55 18 I DON'T ANTICIPATE A SIGNIFICANT AMOUNT

16:26:58 19 OF REDIRECT.

16:26:59 20 WE THEN WILL BRING BOTH DR. IRWIN

16:27:02 21 GOOTNICK AND DR. SUSAN GOOTNICK, WHO WILL BE

16:27:05 22 SIGNIFICANTLY SHORTER THAN MR. FUNG, ON DIRECT.

16:27:08 23 EVEN DR. -- DR. SUSAN GOOTNICK IS VERY

16:27:12 24 BRIEF, AND IT WILL JUST SO HAPPEN WHAT ENDED AT THE

16:27:17 25 END OF THE RELATIONSHIP BETWEEN THE DEFENDANT AND

16:27:20 1 THE GOOTNICKS.

16:27:20 2 I'M STILL THINKING WE CAN HAVE OUR CASE
16:27:23 3 INTO THE JURY, OUR CASE BY WEDNESDAY.

16:27:26 4 THE COURT: SO YOU THINK YOU CAN REST
16:27:28 5 WEDNESDAY MORNING? AFTERNOON? SOME TIME
16:27:32 6 WEDNESDAY?

16:27:32 7 MR. O'REILLY: I NEED TO FIND OUT HOW
16:27:34 8 MUCH -- IF WE CAN GET TO -- IF WE CAN START WITH
16:27:37 9 DR. GOOTNICK ON MONDAY, IT MIGHT EVEN BE WEDNESDAY
16:27:40 10 MORNING BUT OTHERWISE IT WILL BE WEDNESDAY
16:27:42 11 AFTERNOON. I JUST DON'T KNOW HOW LONG THE
16:27:44 12 CROSS-EXAMINATIONS WILL COME.

16:27:45 13 THE COURT: SO MONDAY WE JUST HAVE THE
16:27:48 14 MORNING AVAILABLE?

16:27:48 15 MR. O'REILLY: CORRECT, YOUR HONOR.

16:27:54 16 THE COURT: AND THEN, MR. FONG, YOUR
16:27:56 17 EXPERT IS AVAILABLE TUESDAY.

16:27:58 18 MR. FONG: WEDNESDAY MORNING, WEDNESDAY
16:27:59 19 ALL DAY, BUT I THOUGHT JUST IN CASE, I ASKED HIM TO
16:28:02 20 BE AVAILABLE BY EARLY IN THE MORNING SO THAT IF WE
16:28:07 21 -- SO I GUESS TO MINIMIZE ANY GAP, BUT IT LOOKS
16:28:12 22 LIKE AT THE PRESENT RATE THAT SHOULD NOT BE A
16:28:16 23 PROBLEM IF, IF THE PREDICTION IS THAT THE
16:28:20 24 GOVERNMENT WILL REST EITHER LATE -- TUESDAY OR
16:28:23 25 EARLY WEDNESDAY OR MAYBE EVEN MID-DAY WEDNESDAY.

16:28:26 1

THE COURT: OKAY.

16:28:31 2

16:28:33 3

MR. O'REILLY: YOUR HONOR, WE HAVE YET TO
 SEE ANY REPORT OR TYPE OF INDICATION OF WHAT THIS
 EXPERT WILL BE TESTIFYING TO AND UNTIL WE HAVE THAT
 WE WILL BE OBJECTING BECAUSE WE DON'T KNOW WHAT.

16:28:39 6

16:28:41 7

THE COURT: I WANTED TO TALK ABOUT THAT
 ALSO FOR A MOMENT.

16:28:42 8

16:28:46 9

16:28:48 10

16:28:52 11

16:28:55 12

16:28:58 13

I THINK I ASKED THE WITNESSES AND
 RECEIVED SOME FROM THE GOVERNMENT AND THEN I THINK
 I GOT THESE TWO NAMES ON THE MORNING OF VOIR DIRE
 WHEN I ASKED IF THERE WERE ANY OTHER WITNESSES, I
 THINK. AND MAYBE IT WAS AFTER THAT YOU WANTED ME
 TO ANNOUNCE TO THE JURY.

16:29:00 14

16:29:04 15

16:29:07 16

16:29:10 17

16:29:12 18

16:29:13 19

16:29:15 20

16:29:18 21

16:29:20 22

16:29:25 23

16:29:27 24

16:29:29 25

SO ARE THERE ANY -- LET ME ASK JUST ASK
 THIS, MR. FONG. IN YOUR OPINION ARE THERE ANY
 DISCOVERY ISSUES THAT NEEDS TO BE RESOLVED IN TERMS
 OF REPORTS OR STATEMENTS OR ANYTHING?

MR. FONG: NO, YOUR HONOR. I DON'T THINK
 SO. AND AGAIN, YOUR HONOR, I APOLOGIZE FOR
 DELAYING THE PROCEEDINGS TODAY.

ASIDE FROM THE FACT THAT I TEND TO BE
 PROBABLY ALWAYS BE BEHIND THE EIGHT BALL, BUT
 THAT'S NOT UNUSUAL.

WHAT IS UNUSUAL IS, QUITE FRANKLY,
 MR. FUNG'S TESTIMONY YESTERDAY BROUGHT UP AN

16:29:33 1 AVALANCHE OF NEW ISSUES THAT SOME OF WHICH, ONLY
 16:29:38 2 SOME, NOT ALL, REQUIRE THE DOCUMENTS THAT I THEN
 16:29:40 3 HAD TO PULL TO CROSS-EXAMINE HIM ON.

16:29:45 4 SO, AGAIN, I APOLOGIZE.

16:29:47 5 THE COURT: NO. I JUST WANT TO KNOW
 16:29:49 6 ABOUT THE -- THANK YOU FOR THAT. I APPRECIATE
 16:29:51 7 THAT.

16:29:51 8 WELL, I'M FOCUSING ON THE EXPERT THAT
 16:29:54 9 YOU'RE INTENDING TO CALL.

16:29:56 10 MR. FONG: YES, YOUR HONOR. I SHOULD GET
 16:30:01 11 A REPORT FROM HER THIS WEEKEND, AND I'VE NOT HAD A
 16:30:05 12 REPORT YET, WHICH, OF COURSE, I WOULD HAVE
 16:30:07 13 IMMEDIATELY HAD DISCLOSED TO THE GOVERNMENT.

16:30:08 14 AND AGAIN, YOUR HONOR, UNTIL THE
 16:30:10 15 GOVERNMENT CONFIRMS THAT MR. BOURDIER IS LIKELY TO
 16:30:15 16 SAY X VERSUS Y, AND I WON'T GET INTO THE
 16:30:19 17 PARTICULARS, THERE WAS A CHANCE THAT I WOULD NOT
 16:30:21 18 NEED TO CALL MY EXPERT.

16:30:25 19 BUT NOW IT'S CLEAR I WILL CALL MY EXPERT,
 16:30:28 20 AND I'LL HAVE THE REPORT READY AND I HAVE SHARED
 16:30:31 21 WITH THE GOVERNMENT EXACTLY WHICH DOCUMENTS SHE
 16:30:37 22 WILL BE OPINING ON.

16:30:39 23 I KNOW THAT'S NOT THE SAME AS THE REPORT.
 16:30:40 24 AND I WILL GET TO THE GOVERNMENT HER CV, WHICH I
 16:30:43 25 WAS GOING TO PRINT FROM HER WEB SITE, WHICH, AGAIN,

16:30:46 1 THAT'S MY RESPONSIBILITY. BUT PART OF THE PROBLEM
 16:30:49 2 WAS THAT I THOUGHT THERE WAS A STRONG PROBABILITY
 16:30:58 3 THAT I WOULDN'T NEED TO CALL HER, BUT I DO NEED TO
 16:31:01 4 CALL HER AND I IMMEDIATELY MADE ARRANGEMENTS.

16:31:04 5 THE COURT: AND THE OTHER THING WE NEED
 16:31:05 6 TO SCHEDULE IS A SESSION WHERE WE CAN DISCUSS JURY
 16:31:09 7 INSTRUCTIONS. I DON'T WANT TO LEAVE THAT TO THE
 16:31:15 8 LAST MINUTE ALSO. I WANT TO MAKE SURE WE HAVE
 16:31:17 9 THOSE IN PLACE PRIOR TO ANY ARGUMENT, OF COURSE.

16:31:23 10 SO START THINKING ABOUT THAT OVER THE
 16:31:25 11 WEEKEND, AND WE'LL LOOK AND SEE WHERE WE CAN
 16:31:27 12 PERHAPS SCHEDULE THAT, THAT MEETING.

16:31:29 13 I HAVE A CRIMINAL CALENDAR MONDAY
 16:31:31 14 AFTERNOON. TYPICALLY I CAN GET THAT FINISHED BY
 16:31:35 15 3:00 OR 4:00 O'CLOCK.

16:31:37 16 SO THAT PROVIDES US AN OPPORTUNITY TO
 16:31:39 17 MEET THEN IF THAT'S APPROPRIATE.

16:31:40 18 MR. O'REILLY: WE WILL BE AVAILABLE.

16:31:43 19 THE COURT: LET ME THROW THAT OUT FOR
 16:31:44 20 YOU.

16:31:44 21 MR. FONG: YOUR HONOR, THAT WOULD CREATE
 16:31:47 22 A HARDSHIP. MY OFFICE IS IN PALO ALTO AND I
 16:31:50 23 ACTUALLY HAVE THINGS LINED UP THINGS FOR THIS TRIAL
 16:31:54 24 FOR THE AFTERNOON OF MONDAY. WELL, IF THAT'S THE
 16:32:01 25 ONLY TIME WE CAN MEET, SO BE IT.

16:32:03 1 WELL, AS I SAY, I THROW THAT OUT,
 16:32:06 2 TYPICALLY WE DON'T GO THROUGH 5:00 O'CLOCK, WE
 16:32:08 3 DON'T RUN THROUGH 5:00 IN OUR CRIMINAL CALENDAR IN
 16:32:12 4 THE AFTERNOON. SO LET ME LEAVE YOU WITH YOUR
 16:32:14 5 SCHEDULES THE WEEKEND AND WE CAN TALK ABOUT IT
 16:32:16 6 CERTAINLY MONDAY.

16:32:17 7 MR. FONG: I APPRECIATE THAT, YOUR HONOR.

16:32:19 8 THE COURT: AND IF WE DON'T MEET MONDAY
 16:32:21 9 AFTERNOON FOR JURY INSTRUCTIONS, THEN WE'LL NEED TO
 16:32:25 10 FIND SOME TIME IN THE NEXT COUPLE OF DAYS TO
 16:32:28 11 ACCOMPLISH THAT.

16:32:29 12 SO BE THINKING ABOUT THAT BECAUSE I
 16:32:33 13 OBVIOUSLY WANT TO HAVE THAT PACKET IN PLACE PRIOR
 16:32:36 14 TO ARGUMENT.

16:32:37 15 MR. FONG: SURE.

16:32:39 16 THE COURT: OKAY. ANYTHING ELSE? ANY
 16:32:41 17 OTHER HOUSEKEEPING THAT WE NEED TO BRING UP?

16:32:44 18 MR. O'REILLY: NOTHING FROM THE
 16:32:46 19 GOVERNMENT, YOUR HONOR.

16:32:47 20 THE COURT: OKAY. GREAT.

16:32:48 21 MR. FONG: NOTHING FROM THE DEFENSE.

16:32:50 22 THE COURT: HAVE A GREAT WEEKEND.

16:32:51 23 THANKS. THANK YOU.

24 (WHEREUPON, THE EVENING RECESS WAS
 25 TAKEN.)

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4 CERTIFICATE OF REPORTER
5
6
7

8 I, THE UNDERSIGNED OFFICIAL COURT
9 REPORTER OF THE UNITED STATES DISTRICT COURT FOR
10 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
11 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
12 CERTIFY:

13 THAT THE FOREGOING TRANSCRIPT,
14 CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
15 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
16 SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
17 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
18 TRANSCRIPTION TO THE BEST OF MY ABILITY.

19
20
21
22 /S/
23
24
25

16:32:53
16:32:53 24
16:32:53
16:32:53 25
16:32:53

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

DATED: DECEMBER 10, 2011